Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1995

JAMES E. STEWART,

Petitioner,

V.

THE UNITED STATES OF AMERICA, ET AL.,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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181 PP

QUESTION PRESENTED

Whether the United States as defendant may properly deny right to trial by any of the following means:

(1) refusing to answer the complaint,

(2) using fraud and extrinsic fraud to conceal the lack of a defense,

(3) failing to answer requests for admissions in good faith,

(4) and by defending against a collateral attack upon the judgments with a *res judicata* motion for summary judgment which is unrelated to evidence, using extrinsic fraud and misrepresentation to survive a cross motion for summary judgment, and by ignoring all elements which make the previous judgments void.

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GROUND UPON WHICH JURISDICTION IS INVOKED

The judgment of the court of appeals was entered on July 25, 1995. The jurisdiction of this court is invoked under 28 U.S.C., Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

UNITED STATES CONSTITUTION AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particulary describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION
AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a pesentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION
AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

UNITED STATES CONSTITUTION
AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THE CASE

A. THE PROCEEDINGS BELOW

(1) While acting in excess of authority and without due process or justification, Immigration and Naturalization Service officials closed English Language Center on November 1, 1982.

(2) Administrative Complaint, March 20, 1983. The complaint was ignored, and all communications from the Dallas District Office were terminated.

(3) Immigration and Naturalization Service Hearings in January, March, and May 1983. Special Inquiry Officer, now Judge Gary Burkholder, closed each of the hearings by stating that the authorization under the I-17 continued, finding all issues to be moot and ordered telex notice to be sent to embassies stating that the ELC authorization stood. Before the hearings were scheduled, INS had already issued notice of closing because of their own error and without due process because the closing preceeded the hearing. They refused to effectively withdraw notice of the closing during the six-month series of hearings, they attempted to sabotage the hearings themselves by withholding the documents necessary to the hearings, and they remained willfully in contempt of the findings of Judge Burkholder until March 15, 1989.

(4) United States District Court, for the Western District of Oklahoma, Twashakarris, Inc., v. Immigration and Naturalization Service of the United States and certain officers namely James E. Woods, Ralph Translavina, Robert Church, Alfredo Arizola, and William J. Chambers. Caption later amended to read Twashakarris, Inc., A/K/A English Language Center, an Oklahoma Corporation, and James E. Stewart, individually v. Immigration and Naturalization Service of the United States and its servants, agents and employees, Officers of Immigration and Naturalization Service, both in their official capacity as officers of the federal government and

individually; James E. Woods, District Director [sic], Dallas; Ralph Translavia [sic], Supervisory Examiner, San Antonio; Robert Church, Immigration Official, Oklahoma City; Alfredo Arizola, United States Marshal [sic], Oklahoma City, and William J. Chambers, Retired, Dallas, Texas. CIV-84-2581-E. Dismissed *sua sponte*, January 10, 1985, because James E. Stewart was not licensed to practice law in federal court. The petitioner's motions to amend and for relief from judgment, even though filed by an attorney, were denied because they were filed late.

(5) United States Court of Appeals for the Tenth Circuit, No. 85-1913. Affirms the District Court.

(6) Twashakarris, Inc. a/k/a English Language Center, and James E. Stewart, President and Director v. The United States of America and the Immigration and Naturalization Service of the United States of America and Certain Officers et al, CIV-87-362-T. Dismissed on motion for summary judgment as being out of time to file a complaint.

(7) United States Court of Appeals for the Tenth Circuit, 890 F.2d 236 (10th Cir. 1989) No. 89-6114. Affirms the District Court with explanation that a new complaint should have been filed instead of appealing CIV-84-2581-E.

(8) Stewart v. Commissioner, 63TCM2707 (No. 28499-89). Disallowed deductions using Delaware law, instead of Oklahoma law. TC needs precedent to consider deductions when U.S. causes losses and disruption of business.

(9) Stewart v. Commissioner, 986 F.2d 1429 (10th Cir. 1993). Affirms TC with embellishment and caution that decision was not to be used as precedent.

(10) James E. Stewart and Twashakarris, Inc., an Oklahoma Corporation d/b/a English Language Center v. The United States of America, the United States Department of Justice, and Immigration and Naturalization Service, and Internal Revenue Service, CIV-94-675-W, December 27, 1994, dismissed collateral attack on motion for summary judgment which pleads *res judicata*. Dismissed because district court is

the wrong forum. The petitioner filed a joint return in the years 1987 and 1988 with his wife Luemma C. Stewart who is a party to the tax element of this case.

(11) James E. Stewart, Plaintiff-Appellant, and Twashakarris, Inc., d/b/a English Language Center, an Oklahoma corporation, Plaintiff, v. United States of America; Department of Justice; Immigration and Naturalization Service; Internal Revenue Service. Court of Appeals Tenth Circuit, July 25, 1995, 95-6086, affirmed order and judgment for defense. Twashakarris, Inc., was dismissed because a corporate president is not allowed to proceed. Stewart was dismissed because previous judgments are final and the appellate court is the wrong forum.

All of these judgments are under collateral attack except CIV-94-675-W and 95-6086. This district court judgment and the appellate order and judgment are in error. Except for (8) and (9) above, *all judgments*, were made to deny trial as to the merits.

B. THE FACTUAL BACKGROUND

Although not tried by any court, the events of this case have been characterized in numerous complaints, amended complaints, and appeals, most recently in the collateral attack upon the judgments which was filed May 9, 1994, in CIV-94-675-W in the United States District Court for the Western District of Oklahoma and in the U.S. Court of Appeals, Tenth Circuit (No. 95-6086). The complaint and both judgments are attached hereto in App. 1-27.

United States officials from the Immigration and Naturalization Service (hereinafter "INS"), as named in the original complaint (s.v. Proceedings Below), in concert and, as if by conspiracy, by force of arms drove away the petitioner's students (giving them sixty days to choose a different school),

closed the school to F-1 students,[1] and shut off access to other students by notifying all U.S. consulates abroad of the school's closing. For seven years they refused to cancel the notice. The closing, the violations of due process to keep the school closed, and the defense after filing the complaints are founded in fraud.

The school was closed by an INS enforcement officer who pretended to be a U.S. Marshal with a warrant. With the aid of armed police officers, he forced entry and closed the school. The original inspection was conducted under the pretext of enrollment irregularities which did not exist. The inquiry was not made in writing as required by 8 CFR 214.3 (g)(xii) nor made by the district director as required by (h). The actual closing was under the pretext that the petitioner had failed to submit compliance papers showing that he was not in violation of the Edmond, Oklahoma, fire code. Officials acted upon the presumption that the papers had not been submitted. Later they claimed that the papers had been lost, as was the case in many later instances, App. 58-59. Having already sent the telex notifying consulates that the school was closed, the officer-in-charge in Oklahoma City, as well as an officer under his direction, refused to look at photocopies of the compliance papers because they had not been sent by certified mail.

The next day after the closing by force, the compliance papers were found. Instead of giving clear, legal notice that the authorization to receive students with F-1 student visas remained in force and recalling the students to the school which they and their scholarship agencies had chosen, the Officer in Charge of the Oklahoma City office of INS, beyond the scope of his authority as established in 8 CFR 103.1, issued notice that the petitioner's school, English Language Center,

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[1] Petitioner operates an English-as-a-second-language school for international students who are preparing to enter the U.S. higher education system.

must appear for a hearing before an "Immigration Judge,"[2] App. 58-62.

The OIC, also beyond scope of his authority, required the petitioner to file a petition for approval, an I-17, for the Immigration Judge to consider. The I-17 is a set of papers and documentation to support a petition for approval to issue, or continue issuing I-20 AB's, the necessary form when aliens apply for student visas. Although there was no basis for the hearings in law or in fact, the new I-17 was never brought to the hearings, causing two costly continuances because the school's name was being disparaged and, consequently, its ability to retain scholarship agency references and enroll new students was crumbling.

During the first hearing before the immigration judge, one of the officers, who is not an attorney, acted as counsel for the government. During the second hearing the same officer behaved so badly that an INS attorney from the Dallas office said that he wanted to cross-examine him. The INS attorney withdrew the request after realizing that he was there to represent the officer and the Oklahoma City office. At the close of each hearing, without the lost I-17 papers and with no testimony or other basis to deny petitioner authorization, Judge Gary Burkholder declared all issues moot. Upon close of the proceeding, the petitioner, who had been blocked without due process at all embassies and consulates from October of 1982 to May of 1983, requested that INS officers be required to provide proof that correct information had been sent to all consulates. Judge Burkholder ordered the INS to issue a telex to all embassies and consulates canceling the closing order. A copy of a telex was provided to the petitioner, App. 99-102, but it was never transmitted.

The hearings had not been requested, and there was no written notice under consideration as provided for by CFR

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[2] The letter uses this term. In 8 CFR 214, he was called Special Inquiry Officer.

8.214.4, no verbal complaint given as basis for withdrawal of approval, no record of the proceeding was made, and no written determination was issued. The petitioner possesses a stenographic record.

In December of 1983 the petitioner's agent in Venezuela faced both criminal and civil charges for enrolling students in a school that was closed. The Oklahoma City office refused to send any message to the consul general; however, Mr. Homer McCain in the Dallas office complied (App. 62). After this, Venezuela was one of the only consulates open to the petitioner, although the agent had been alienated, as were all other agents. The director of the school wrote to some other consulates and learned that they also had not received notice other than the one that stated that the school was closed for having inadequate facilities, App. 100-102. He then pleaded with the Oklahoma City office of INS and the district office in Dallas to transmit the message again, but to no avail, App. 60-70. Most of these events can be proven by correspondence and affidavits which were filed with the administrative notice, App. 71-85, and attached to numerous forms of the complaint.

When all schools in the United States were required to file new I-17's with INS Commissioner Carmichael in Washington, D.C., the English Language Center principal had occasion to discuss other business with one of the INS officers who had closed the school. On that occasion the officer said that the I-17, when sent to Washington, would land on his desk in Oklahoma City. He then threatened to withdraw the authorization. He drew his finger across his own throat in a symbolic gesture, App. 103-104.

Judge Thompson later excused the men who had destroyed the school from all personal culpability because they "had been transferred or had retired," and had qualified immunity. The man who ordered the raid is now stationed in the Oklahoma City office of INS, yet all of the men were either negligent or acting beyond the scope of their authority. This

release of federal officers before trial is part of the record of this case. The order dismissing the officers is void since it is based upon fraudulent claims to avoid trial, App. 127-145.

The last overt act of known, provable damage occurred in 1989, the year that Judge Thompson dismissed the case for being out of time to file a complaint, App. 32-38. The first complaint was filed five years before the last overt act. The instance over which Judge Thompson presided was filed in 1987 and was dismissed in 1989 on motion for summary judgment, without any showing as to any evidence. Summary judgment was granted because the complaint was not timely filed. In 1989 the American Embassy denied a Visa at Kuala Lumpur, Malaysia, to a student applicant named Calvin Wong. Unlike others who were denied, Calvin Wong, through his brother, reported the incident. In a phone call to Malaysia the petitioner learned that the Department of State had not cleared the notice of closing from its data bank. So, from October of 1982 until 1989, the English Language Center remained wrongfully closed because of the deliberate negligence of officers and the agency which had refused to cancel the incorrect notice of closing. INS was attempting to destroy the last vestige of any value, the authorization to receive new students.

INS's losing the new I-17 which was sent to Washington prevented clarification of notice. The officers who raided English Language Center knew that English Language Center had vacated the premises which needed fire marshal approval. Yet, they made the raid and, for seven years, permitted their official disparagement to do its damage. Everything except the agency's requiring a public hearing has been denied, in fraud. A *sua sponte* dismissal, without notice or hearing, has been granted. Despite the quality and mass of the petitioner's evidence, two awards of summary judgment have been granted and affirmed, with no consideration as to evidence, but for being untimely filed, despite provable claims that overt acts, due to official disparagement, were occurring

into the year of the dismissal and, in the recent instance, because the previous judgments were final. Despite many entreaties for hearing and trial, there has been no answer as to merit.

Because the petitioner suffered severe financial damage which lasted from 1982 to 1989, the petitioner found representation to be nearly impossible to obtain because the United States is the defendant. Experienced attorneys required retainers of $20,000 to $30,000 and refused contingency arrangements because of the abnormal character of defense to be expected when the United States is a party.

It did not matter to the attorneys that the petitioner had a set of facts that was easy to prove. The attorneys claimed that U.S. attorneys would be able to make access to the jury in a civil case cost more than the petitioner would be able to pay, and the case would require more time than the attorneys could risk on a contingency arrangement. The attorneys claimed that government defense attorneys successfully tie up opponents in interminable litigation as a strategy. They were correct.

Although U.S. attorneys have no case to present on trial, and do not have the ability to controvert any of the petitioner's evidence, they have avoided answer and hearing of any kind since 1984. By fraudulent denials, the federal officers have evaded trial entirely, and the U.S. attorneys have prevailed by use of extrinsic fraud.

Although the petitioner has called attention in past pleadings to the intimidating effect of the U.S. attorneys seeking sanctions in the same instance in which they were engaged in filing the fraudulent admissions ot the officers and themselves guilty of extrinsic fraud to deny hearing, the petitioner has been silent regarding the false arrest of one of his principal witnesses on a felony charge. This event ran the witness into debt and subsequent resignation. He was the last employee to remain after the illegal closing of the school. Only recently, since the last appellate order and judgment, the petitioner has learned that the unidentified informant who gave

false witness was a "federal informant" who failed to appear at the pretrial hearing. Whether this is correct, the plaintiff has not been able to determine. The arrest and imprisonment occurred. The conspiracy cannot be proven, nor does it need to be. These actions comprise constructive duress to separate the action from representation and to intimidate the petitioner from seeking remedy.

Whether represented by attorneys or not, the petitioner has been powerless in face of a fraudulent defense in courts which are reluctant to take cognizance of the U.S. while in default. There has been no basis for the government's case since its defiance of Judge Thompson's order to compel discovery, Rule 36(a), Federal Rules of Civil Procedure. This matter was urged on brief for declaratory judgment to Judge West, to which there was no defense, neither there, nor on appeal.

REASONS FOR GRANTING WRIT

I. Since the circuit court nor the appellate court is willing, a determination from the Supreme Court is needed to enforce its own rules when the United States is the defendant.

U.S. attorneys have successfully avoided answering the petitioner's complaint since 1984. Federal Rules of Civil Procedure, Rule 7(a) states "There shall be a complaint and an answer: . . . No other pleading shall be allowed." Rule 7(c) states "Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used." Rule 16(a)(3) provides for pretrial conferences for "discouraging wasteful pretrial activities." There is provision for default motion, Rule 55(e), if "claimant establishes a claim or right to relief by evidence satisfactory to the court."

As the dockets show (App. 113-121), the original complaint was filed October 19, 1984. November 9, 1984, U.S. attorneys were granted additional time to answer "or otherwise plead." Although not allowed without answering first, on December 14, U.S. attorneys moved for more definite statement, alleging no vagueness or ambiguity in the complaint as required by Rule 12(e). December 18, 1984, U.S. attorneys filed for additional time to answer requests for admissions alleging that the individuals were out of town, among other reasons equally vacuous. December 20, they received extension of time to answer admissions "up to and including the time an answer is due."

On January 7, 1985, realizing that the U.S. attorneys were merely stalling, the plaintiff filed for judgment in default as provided by Rule 55(e). On January 10, 1985, Judge Eubanks *sua sponte* dismissed the action in terms that were final enough to convince the petitioner and several attorneys that the dismissal was amendable and, if not, appealable (App. 28-29). There is no precedent for *sua sponte* dismissal because of the existence of amendable error in the complaint; nor is there provision in the FRCP for motion to make certain prior to answer when no vagueness nor ambiguity is alleged.

Neither of the three circuit court judges has taken over the management of the case and demanded an answer prior to other pleadings nor scheduled a hearing of any kind. The petitioner is still seeking a court that will demand that the U.S. attorneys declare whether they have a defense. Clear precedent should be established to prevent agencies from ignoring administrative notice when official disparagement is alleged, failing in fiduciary duty. Clear precedent is needed to prevent federal pleaders from using insincere pleadings as a strategy to avoid answer, hearing, and trial. When so allowed, they violate Seventh Amendment rights, convert citizens into subjects, and states into occupied zones.

The U.S. attorneys have filed over twenty motions to avoid answer and have prevailed by distorting the cases which

they have cited in relation to the point of law and in relation to the factual basis of the case before the court. They have prevailed by misrepresentation as to documents which are on file. Despite their defending without a defense, they have won two summary judgments. If allowed, as in this case, the U.S. as defendant can plead itself out of any trespass, annulling the Federal Torts Claims Act as well as Constitutional rights.

The petitioner has been assured by several attorneys that the United States is immune from default judgment. Yet, Rule 55(e) states the contrary. It is not by the rules or the law that the U.S. is immune. It is by practice. Rule 55(e) is the litigant's only protection against a defense strategy to deny trial, yet there is no precedent indicating that it has ever been used. The petitioner's default motion merely recoiled. The court has authority to establish clear precedent and provide the needed relief which the lower courts deny.

II. Supreme Court Consideration is Needed to Void Previous Judgments.

Both the circuit court (CIV-94-675-W) and the appellate court (95-6086) have refused to accept jurisdiction over the collateral attack. Supreme Court precedent and Rule 60(b) "vests power in courts to enable them to vacate judgments whenever such action is appropriate to accomplish justice, *Klapprott v. United States*, 335 U.S. 601, 615 (1949). Although, "a court has the power to determine the extent of its own jurisdiction," *Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456, 458, "a void judgment is one which from the beginning was a complete nullity and without any legal effect," *ibid.*, 458. A district court may make "a declaration that a judgment is void" and can exercise remedial powers, even though a courts martial issue the order, *Schlesinger, Secretary of Defense, et al. v. Councilman*, 420 U.S. 738, 746-747, 748, 754.

If neither the circuit court nor the appellate court chooses to consider the circumstances which denied the petitioner a hearing and the opportunity to prove his set of facts, the Supreme Court is not only the court of last resort, it provided the precedents which these courts choose to ignore. At this point it is the only court that might be willing to require U.S. attorneys to answer and to establish whether they have ever had basis in fact for a jury to try.

The circuit court in CIV-94-675-W, December 27, 1994, declined to examine the claim that the previous judgments are void as "not the proper forum" and that the circuit court "is not empowered to review decisions" of the appellate court or those of the lower courts. Although the petitioner explained in a motion to reconsider that review was not requested and that the judgments were nullities, the Honorable Lee R. West was not persuaded. He held to his decision to grant judgment to the defendants on the motion for summary judgment which had recited the previous judgments as "the facts" and as final and the basis for the motion. He did not require the defense to meet any other burden as to evidence. The U.S. attorneys gave no attention to collateral events which made the judgments void according to established supreme court precedents.

The appellate court dismissed the corporation because, in the Tenth Circuit, "A corporation may appear in court only through an attorney," the same reason given by Judge Eubanks in January of 1985 for dismissing the case. Because Stewart is the only shareholder except for ten shares, this point was contested on appeal without success. Courts are divided on whether a corporation so held may be represented by its president. It was wrongful that a corporation which has been severely damaged is entirely defenseless and the helpless subject of any trespass which might please the U.S. as adversary. This denies entity as defined by Oklahoma law, as argued on appellate brief, and supported by FRCP, Rule 17(b). This point needs review.

As to the collateral attack, the Tenth Circuit said: "Mr. Stewart fails to realize this civil action is not the appropriate forum to raise these challenges [i.e. the collateral attack]. There comes a time when litigation ceases. That time has long since passed." To the court, repose outweighs equity and the right to trial by jury.

The circuit court granted summary judgment to dismiss the collateral attack on the basis of the *res judicata* plea, and the appellate court affirmed. Both are in error because Rule 56 requires the movant to make a showing in regard to evidence. Because they are nullities and lack jurisdiction, void judgments may not be defended as *res judicata, Hobbs, supra*, 458.

The Supreme Court has conferred sufficient power to these courts to examine the basis for the petitioner's claim that the judgments are void. In another INS case, the Supreme Court has said, "Petitioner is entitled to a fair trial. He has not had it. The Government makes no claim that it has. Fair hearings are in accord with elemental concepts of justice. . . . In simple English, the language of 'the other reason' clause [60(b)] . . . vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," *Klaprott, supra*, 614-615.

"A void judgment is one which, from its inception, was a complete nullity and without legal effect, *Lubben v. Selective Service*, 453 F.2d 645, 649 (1972); also see 7 Moore's Federal Practice, Paragraph 60.25.

Lubben also states that only in rare instances "of a clear usurpation of power will a judgment be rendered void," *supra*, 649. Even rarer would be a case in which there are more bases for voiding judgments. Since the circuit court refused to accept jurisdiction and the appellate court was not convinced, the petitioner respectfully requests the Supreme Court to consider whether the following judgments are to stand as valid:

CIV-84-2581-E is void for several reasons. The case was filed with Twashakarris, Inc., named as plaintiff. It was signed at the end, J.E. Stewart. James E. Stewart (the same

person) was designated in the complaint as Director of English Language Center. When the U.S. Attorney filed for more definite statement but cited no vagueness nor ambiguity to be made clearer, the petitioner filed for the default judgment. Because Stewart was not admitted to practice law, Judge Eubanks issued his order saying, "This case and all causes of action to be filed are *sua sponte* dismissed." In subsequent instances, even though represented by an attorney who kept demanding a hearing, the petitioner made no more motions for default judgment, even though the United States has been consistently in default.

This *sua sponte* dismissal, without notice and hearing, denies a fundamental right. Had there been notice of intent to dismiss, the petitioner might have discovered that he had had the unquestionable standing according to Oklahoma law to file because he was the only entity which could recover damages suffered while the corporation was under suspension (see O.S. 68:1212 and certified statement from the Oklahoma Secretary of State, App. 122-126). He also might have requested time to find an attorney. After finding an attorney, he filed an amended complaint and for relief from judgment. All amendment was disallowed because it was not timely filed. The appellate court, also ignorant as to the petitioner's standing, affirmed that a corporation president who owns all the stock cannot represent it, but it granted leave to file a new complaint.

Because of the finality of Judge Eubanks' language and his disallowing amendment as to parties and representation, the three attorneys who were advising the plaintiff had assumed the dismissal to be with prejudice. The appellate court made it clear five years later that Judge Eubanks had meant "without prejudice" because, if he had meant "with prejudice," he would have said so. Judge Thompson said when he dismissed the new complaint, "the petitioners failed to file their lawsuit within six months of the appellate decision," (CIV-87-362-T). Although the petitioner had made it clear on brief that overt

acts of damage were still occurring at the time of the order, the petitioner was time-barred except for "alleged wrongs occurring in 1986 and possibly in 1984" (Judge Thompson's order of January 30, 1989, App. 32-38). Again, the plaintiff did not have a lawyer during the six-month period following the appellate decision. From the time the original complaint was dismissed, the action has been in time difficulties, primarily because the petitioner and his lawyers understood the Eubanks dismissal to be with prejudice. The petitioner had waited for a response from the appellate court before refiling. Although there was no difference as to parties and events, Judge Thompson classified the complaint to which he was reacting as "the second lawsuit," and he ruled that the part prior was out of time because of the limitation to refile. Had the tort consisted of a single event, he might have been correct as to time; however, he did not realize that the overt acts were actually occurring until March 15, 1989. Judge Thompson's time divisions separated the petitioner's suit from its evidence, destroying the suit. Had Judge Eubanks known that the petitioner had standing to file, later time problems would not have occurred; had Judge Thompson tried the case, he could have understood the true nature of the trespass. He would also have learned that he was being led by fraud.The U.S. attorneys have been out of time since before the default motion was filed January 7, 1985, because they have never answered, and INS has never answered requests for admissions. Because of the continuing overt acts which resulted from the official disparagement, the petitioner has never been out of time.

The Eubanks dismissal is also void because of gross violation of due process, especially since the judge was ignorant as to parties, refused permission to amend, and he ignored a default motion. A judgment that is void of due process is subject to collateral attack, *Bass v. Hoagland*, 172 F.2d 205, citing *Westmore v. Karrick*, 205 U.S. 141. Judgments are void "where procedural defects are sufficiently serious," *Fehlhaber v. Fehlhaber*, 681 F.2d 1015.

Dismissing *sua sponte* without notice is not within the discretion of the court. "The court must give notice of its *sua sponte* intention," *Wong v. Bell*, 642 F.2d 359 (1981). The court must afford plaintiffs "an opportunity to at least submit a written memorandum in opposition to such motion," in *Wong* (*supra*), quoting *Crawford v. Bell*, 599 F.2d 890 (9th Circuit 1979). here was no notice, no hearing, and no amendments were allowed. Ignorant as to parties, the court rescued the U.S. from a default hearing.

"A sentence of a court, without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights and is not entitled to respect in any other tribunal," *Windsor v. McVeigh*, 93 US. 914, 918. Regardless of the time question, judgment without notice and hearing constitutes gross violation of due process and voids the judgment. In the wake of *Windsor v. McVeigh* and *Hovey v. Elliot*, 167 U.S. 215, there are many judgments which abhor such dismissals.

Precedent is needed to disallow *sua sponte* dismissals when the U.S. as a defendant is using irrelevant motions while refusing to answer. Relief is needed from the effects of this unfair and uninformed dismissal.

CIV-87-362-T is void because the Honorable Judge Thompson was not cognizant of the overt acts of damage which were still occurring as a result of the official acts of disparagement. The petitioner alleged continuing damage, such as having been omitted from the official list of schools that the embassy published in Mexico, App. 88, but the petitioner was unaware that the notice persisted in the computer files of the Department of State. At trial, the petitioner might have had an opportunity to make the disparagement clear. Judge Thompson also released the individuals who had just filed fraudulent denials, many of which were fraudulent on the face and on file (see App. 127-145).

"A civil action is commenced by filing a complaint with the court." Rule 3 is unequivical. "Federal action is commenced by the filing of a complaint," *Pacesetter Systems*,

Inc. v. Metronic, Inc., 678 F.2d 93 (1982). The point is made in nineteen cases cited by the *Pacesetter* court. The complaint had been filed twice before Judge Thompson saw it.

U.S. attorneys, instead of stipulating the obvious, put together a brief for Judge Thompson with precedents which they claimed had established that an appeal does not toll the statute of limitations. Although the point is true, the U.S. attorneys had to play doctor with the precedents because it is not the appeal which tolls.

The U.S. attorneys cited *Dupree v. Jefferson*, 666 F.2d 606, a case in which the plaintiff had filed notice of appeal, abandoned it, then filed a supplemental complaint, and then more than three years later filed the appeal. Continuing trespass was not alleged. This case is not on point.

Crown Coat Front Co., Inc. v. United States, 395 F.2d 160 concerns whether a breach of contract or the administrative error began the six-year limitation to file on the breach of contract. This case is not on point.

Jones v. Nye, 156 P. 332 (1916), concerns the efficacy of the one-year limit in which a dormant judgment may be filed by a judgment creditor. This case is not on point.

In *State v. Hart Refineries*, 92 P.2d 766 (1939), state officials sought more money despite a state statute which barred an action on a judgment after six years. This case is not on point.

Gottleib v. Thatcher, _____ U.S. 272, concerned a supersedes bond with securities which suspended action on the judgment. This case, like the others, is not on point nor related to fact.

On brief to the Tenth Circuit, the U.S. attorneys also cited three of these cases to establish the point of law which they had invented for the occasion: "an appeal tolls the limitations period, *but only* when the appellant is precluded from proceeding further in the trial court by the order being appealed."

The U.S. attorneys used these distortions to deny right to trial. They prevailed on a motion for summary judgment without having answered, without meeting the burden of the movant as required by Rule 56, and on the basis of the time question. During this same instance, U.S. attorneys used misrepresentation to deny that a factual basis existed for trial (see evidence file in App. 39 through 126), the officials filed fraudulent denials (see App. 127-145), and the Immigration and Naturalization Service defied the judge's order to respond to requests for admissions by remaining silent. Their fraud and collateral fraud prevailed. Together they comprise extrinsic fraud to deny trial.

"Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent . . . [and] there has never been a real contest in the trial hearing of the case, a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing . . .. "[R]elief has been granted, upon the ground that, by some fraud practiced upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court," *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878). *U.S. v. Throckmorton* established clear basis for setting aside judgments where frauds "are extrinsic or collateral to the matter tried, and not a fraud which was in issue in the former suit," *ibid.*, from the headnote which paraphrases Mr. Justice Miller's statement, p.68. On brief in pleadings before the lower courts, numerous cases were cited which hold to this dichotomy and cite *U.S. v Throckmorton* as the leading case.

"Fraud . . . the arch enemy of equity, . . .cuts down everything . . . the law sets itself against," and it matters not whether it be actual, constructive equity will intervene if it prevents presenting the case fully, p. 732, and "failure to prove actual fraud is unimportant," p. 733. *Bullard v. Zimmerman, et al.*, 292 P. 730, 733 (Montana), quoting Freeman on Judgments

(5th Ed.) 2587. At trial, the report from Malaysia would have influenced a jury.

Ignorance of a good defense also provides grounds to void a judgment, *McCowen v. Flanders, et al.*, 118 S.E. 351, 353, citing *Mobley v. Mobley*, 9 Ga. 247. Also see *Young v. Young*, 2 S.E. 622, which cites several precedents at 625-626. The cases alone cite several precedents for voiding judgments when duress or constructive duress are elements to prevent the case from being heard. The constructive duress in this case has been successful in separating the petitioner from counsel. The manner of attack, the actions in contempt of the administrative hearing, the malicious prosecution of a witness, motions for sanctions against the petitioner's attorney (see App. 30-31), and the essentially dishonest defense meet the tests in *Young v. Young*, *ibid.*

The Thompson decision granted judgment based on untried characterizations of the individual officers who had filed fraudulent denials. According to Rule 56, summary judgment is to be granted only when the adverse party has no set of facts to try. The movant has that burden, which, in this case was not attempted beyond fraudulent denial and averments. The summary judgment decree comprises judgment without hearing, ignoring the petitioners evidence, the only evidence that has been proferred.

The extrinsic fraud, ignorance of the last overt act of damage, duress, and the fraudulent denials of the officers void the Thompson dismissal. Yet, neither the circuit court nor the appellate court would void the judgment.

III. Because CIV-94-675-W is in error and has been affirmed, a Supreme Court decision is needed for relief.

The judgment affirms a motion for summary judgment to the U.S. attorneys who managed to present no evidence nor contravene any evidence. The petitioner has discussed this issue fully on brief to the circuit court and to the appellate

court, and, like the issue of void judgments, it has gone unanswered except in fraud.

The U.S. attorneys claimed that the stack of correspondence, memos, and sworn affidavits did not exist. The U.S. attorneys fraudulently claimed that the petitioner was grounded only upon generalizations.

Rule 56(a)(b) plainly states that the moving party may "move with or without supporting affidavits," but Rule 56(c) states: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The parallel conditional listing in Rule 56(c), begins with the word *pleadings* . The items in the list are bound to the phrase *as to any material fact* because that phrase is restrictive, not parenthetical. This means that the phrase *that there is no genuine issue as to any material fact* applies equally to each of the parallel elements in the condition. Twice the circuit court has ruled as if any kind of *pleading* is within the context of the rule. However, the phrase, *as to any material fact,* as a restrictive modifier, binds *fact* to the items listed in the conditional element. The conditional elements are all tied to both *material* fact and to entitlement *as a matter of* law. As stated, there is no other way to construe the grammar of the rule. Yet this summary judgment was granted with *no* honest attention as to any material fact. Rule 56 requires it.

The Supreme Court's own Advisory Committee on Rules in the Educational Edition of The Rules of Civil Procedure, (St. Paul: West, 1991) says: "The very mission of the summary judgment procedure is to pierce the pleadings and to assess proof in order to see whether there is genuine need for trial," Notes of the Advisory Committee on Rules, 1963 Amendment in *ibid.*, p.168. To permit "the pleadings themselves to stand in the way of granting an otherwise justified judgment, is incompatible with the basic purpose of the rule,"

Notes, p. 168. The Thompson and West judgments pervert the rule as stated and as interpreted by the precedents in *Cellotex* v. *Caterett*, 477 U.S. 317 and *Adickes v. S.H. Kress & Co.* 398 U.S. 144.

In both the Thompson and the West judgments, the time bars, not the evidence, were grounds for dismissal on motion for summary judgment. Judge Eubanks, Judge Thompson, and Judge West are all well experienced and each was Chief Judge of the Circuit Court at the time the case was before him. The petitioner assumes the management of this case to be typical when the U.S., its agencies, or its officers are the defendants. Yet matters which should have been amended or considered for abatement, were settled on a motion which goes to the merits without consideration as to merit. These judgments may be a custom of the federal courts, but they have no basis in federal law.

As has been set forth on brief, the U.S. attorneys extended their extrinsic fraud into the pleadings of CIV-94-675-W in their characteristic manner: (1) by continuing to refuse to answer the complaint, and remaining silent as to the judgments under attack; (2) by claiming that the packets of evidence filed by the petitioner did not exist, and; (3) by distorting precedent.

The distortion requires some clarification because it conceals the U.S. attorneys' failure to meet their burden as movant and as the adversary of a cross motion.

U.S. Attorneys' claim: The listing of the orders consist of the facts of the case which is "fully litigated." July 8, 1994.

Petitioner's Response: In Rule 56 there is no basis for the previous orders to satisfy the burden as to evidence. The U.S. has avoided litigation.

U.S. Attorneys' claim: "[T]he moving party need only demonstrate the facts relied upon by the nonmoving party are not susceptible of the interpretation sought." They cite *First National Bank v. Cities Service Co.*, 391 U.S. 253, 289 (1986) and *Pueblo Neighborhood Health Centers.* August 5, 1994.

Petitioner's response: Neither *First National* nor *Pueblo* (which merely paraphrase Rule 56) excuses the movant from burden in regard to evidence. The statement relates to President Waldron of First National who had made interpretations in regard to Cities Service's negotiations with Iran. It has nothing to do with the case at hand. Guns in the classroom are not interpretations (App. 56-57).

U.S. Attorneys: "In its motion, defendants established the absence of evidence in support of plaintiff's claim." August 5, 1994.

Petitioner's Response: There is no reference to anybody's evidence. There are only previous orders and judgments offered, which wear the robes of evidence. Not one of the orders was based upon material fact.

U.S. Attorneys: "Plaintiff cannot simply rest on his unsupported allegations without any significant probative evidence tending to support the complaint."

Petitioner's Response: The packet of evidence was attached to the administrative notice and each of the complaints, including the instance before Judge West. The phrase applies to *Anderson v. Liberty Lobby, Inc.* not this one.

U.S. Attorneys: [Possibly to satisfy petitioner's cross motion for summary judgment], "evidence favoring the moving party must be more than merely colorable . . . and must attain the dignity of substantial evidence and not be such as merely to create suspicion . . .." August 5, 1994.

Petitioner's Response: Evidence on file named the officers, when they did what was done, and who was present; it included detailed memos, one officer's own notes brought to the school when he announced that he had come to "shut you down." The point refers only to the case which the U.S. attorneys cited, not the case at hand.

U.S. Attorneys: Plaintiff failed to address defendant's motion regarding his tax-related claim and therefore confessed, Local Rule 14(b) (paraphrased). August 5, 1994.

Petitioner's Response: The petitioner had already addressed the question which remains uncontroverted. The petitioner had already heard about the judgment, the appeal, and the U.S. Tax Code. Since the U.S. attorneys ignore all elements of the complaint and the claim that the previous judgments are void, according to House Rule 14(b), the defendants confess the entire case, including the tax claim.

As was shown on brief, the cases which the U.S. attorneys cite belie their own claims. The U.S. attorneys have resorted to extrinsic fraud because their client cannot survive a stipulation hearing or a motion for summary judgment. Yet, their fraud prevails. The judgment has been affirmed. Both are in error. Because of the fraud to avoid trial, this judgment is also void, that is, unless the Supreme Court chooses to overturn *U.S.* v. *Throckmorton* and strike the Seventh Amendment.

As has been pointed out on brief, the U.S. attorneys have filed fraudulent denials, have presented nothing but pleading to veil lack of defense, have moved five times for summary judgment, and have never once attempted to meet the burden of movant by contravening any of the petitioner's evidence. They have been in the condition of having admitted all major elements by their fraudulent participation in discovery and fraudulent denials since the Thompson instance. They have made *no* attempts at discovery. They have been in defacto default since the motion for default was filed because they have not answered the complaint. Truthfully, they can only admit to inflicting the torts. Yet they have been awarded two summary judgments.

The U.S. attorneys are consistently in breach of the Rules of Civil Procedure and Supreme Court precedent. The fraud by the officers and the extrinsic fraud of the U.S. attorneys are in breach of the Seventh Amendment because, together, they deny trial. If there is to be a judgment consistent with the facts and the law, the Supreme Court must consider the matter. The lower courts, with the U.S. as a defendant,

refuse. They have already overturned *Windsor v. McVeigh* and *U.S. v. Throckmorton*. To this point they have consistently preferred the facts as misrepresented, the law as ignored or distorted, and insncere pleadings in lieu of honest defense.

IV. A Supreme court decision is needed to void the tax court judgment and levees which were made in ignorance of Oklahoma law which clarifies standing, and they are unjust and illogical under current rules and precedent.

Ignorance of a defense makes 63TCM2707 and Tenth Circuit No. 92-9007 void, yet neither the circuit court nor the appellate court is willing to void the judgments because they are *res judicata* and the courts are not the proper forum.

The tax questions in 63TCM2707 are consolidated with the torts claim in the collateral attack. U.S. attorneys, the circuit court, and the appellate court are silent as to this pleading, except that they are time-barred to direct appeal. Rule 42(b) provides for consolidation "when actions involving a common question of law or fact are pending before the court." The court "may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

The events which denied the school its source of income caused losses which were taken as deductions on the petitioner's personal income taxes. IRS has denied these deductions because they are corporate losses; however, IRS accepts the expenses as necessary and ordinary. The appellate court ruled that they are not ordinary because they are corporate, regardless of the status of the corporation.

Because Twashakarris, Inc., was suspended by the Oklahoma Tax Commission during 1985, 1987, and 1988 and was, until reinstatement, a nonentity, O.S. 68:1212(c), (App. 124-126), responsibility reverted to the only stockholder as a sole proprietor. Since standing is also an element in the tort claim regarding the dismissal of the *pro se* filing and the

collateral attack upon Judge Eubanks' and Judge Thompson's decisions, the question is common in both law and fact. Therefore, the tax cases should properly be consolidated, and the previous judgments for 1985 and the administrative determinations relevant to 1987 and 1988 should be voided.

The commissioner disallowed the deductions on the basis of Section 162 of the U.S. Income Tax Code which does not allow a deduction for expenses paid or incurred on behalf of another person or entity, despite the fact that the corporation was not a legal entity according to Oklahoma law. Such a construction is an enroachment upon U.S. Constitution, Amendment IX, placing IRS as the authority establishing standing, not the sovereign which created the corporation.

The Tax Court and the Appellate Court rejected the Oklahoma statute because it is in a tax law to raise revenue. It is still law. Rule 17(b) of the Federal Rules of Civil Procedure says the standing of a corporation depends on "the state law under which it was organized." The Tenth Circuit also claims that, although state law determines standing, federal law determines the tax. In this instance, the tax is being determined in direct opposition to standing. It defies logic to tax or to allow deductions to a nonentity. It would be as logical to tax the living while allowing deductions to a corpse.

On appeal the petitioner cited *J.D. Simmons v. Alliance Corporation*, 79 F.R.D. 547 (W.D. Okla. 1978), in which Judge Thompson ruled as follows: "The defendants' references to cases which support a reinstatement date retroactive to the date of suspension are not persuasive." The defendants in *Simmons* found that, even though the franchise tax had been paid, the Oklahoma corporation remained powerless till actually reinstated by the Secretary of State. The case on which *Simmons* is premised was presented for the first time in the collateral attack. In it the Oklahoma Supreme Court found as follows: "We hold that corporate officers, directors, and trustees are personally liable for the debts incurred by the corporation after suspension and before reinstatement is issued

pursuant to Section 1212(c) . . . Until the reinstatement order is issued, personal liability remains," *Nichols-Homeshield v. Mid-America, etc.*, 643 P.2d 309 (Okla. 1982), 311. The Tax Court, the Tenth Circuit, nor the petitioner had this precedent available. The case provides clear unequivical basis for assigning personal liabilities and, if logic still works, the deductions belong to the entity which, by law, has both the power and the liabilities. The U.S. attorneys relied solely on the previous orders without defending the judgments. Yet, this precedent provides basis in law to void the tax judgments and decrees. Although the Tenth Circuit called for a clear precedent when the tax case was on appeal, the court was "not convinced" when precedent was provided.

Instead of relying upon Oklahoma law which fixes liabilities, the Tenth Circuit itself has argued that the issue cannot be resolved to the petitioner's benefit because the Twashakarris charter never went through a final charter revocation procedure as occurs in Tennessee and Delaware. In Oklahoma, suspension has the same effect on standing as does revocation in other states. In Tax Court the petitioner nor IRS counsel could answer Judge Couvillion's question with authority other than O.S. 1212. That statute is now clarified in *Nichols-Homeshield* and recognized by Judge Thompson in *Simmons*. Oklahoma revised its revocation procedure, and suspension now serves the same purpose. The Tax Court decided that even a dead corporation still exists "for tax purposes." Oklahoma law does not bear this out. Under O.S. 1212, a suspended corporation cannot sue nor be sued, so how could it enforce the deduction?

As to whether a suspended corporation still exists "for tax purposes", the answer is simple. In Oklahoma, the suspended corporation has to pay the back franchise taxes and penalties. This is inadequate to the use employed in this case.

Tax Court and the Tenth Circuit made their determinations in ignorance of Oklahoma law and precedent cases which define standing. Ignorance of law and fact necessary to

a judgment renders the judgment void (see *Farley*, *supra*; and citations in *Farley*).

The illegal raid, fraudulent compliance to the findings of the immigration judge, and insincere defense caused the expenses to be necessary. Otherwise, there would have been no tax question. The U.S. government cannot, in equity, profit from adversities which its own officials inflict in malice and defend by fraud while in defacto contempt and default. As to the basis of the collateral attack upon the tax judgments, the U.S. attorneys and the lower courts are silent. The petitioner claims his right in this regard and respectfully requests to be excused from IRS levees and tax liens for 1985, 1987, and 1988.

The tax related questions need precedent to determine whether Oklahoma law is to establish standing of an Oklahoma taxpayer when his corporation is under suspension. Although there is precedent to allow American businesses to claim net operating losses when confiscated by a foreign government, there is no rule in the U.S. tax code nor any precedent decision that allows the deductions when a business is under confiscation by U.S. officials by trespass.

Extrinsic fraud casts a long shadow over federal pleading. The petitioner has relied upon 68 OS (1971), 1212(c). As in the civil suit and noted on brief, the IRS counsel also distorted precedent cases, the petitioner responded, and then he found the government's position in the judgment and in the appellate order. Pleading by distortion delays the emergence of the true issue till the judgment or order, making the court itself the real opponent. After the judgment, normal litigation is foreclosed, especially when the appellate court takes up the role of defense advocate. Pleading by distortion has been the normal situation that the petitioner has faced whether represented or not, whether facing U.S. attorneys, or IRS attorneys, whether in circuit court or appellate court. To effectively oppose the U.S. attorneys' pleading or that of IRS counsel, the petitioner needed only to

read the cases cited by counsel. Though the distortions were pointed out on brief, the judges have preferred the perversions of precedent and fact. When such judgments deny trial, they are void.

Due process of law involves and implies the right to be heard, *Hovey v. Elliott, supra*, p. 217. *Hovey* reaches all the way back to the 29th chapter of the Magna Carta (p. 220) and concludes that seizing property without "verdict of his equals" is "against every principle of justice." The orders of the lower courts indicate that those judgments were often made without the court's understanding the factual situation. The only clear interest of the courts has been identical to that of the U.S. attorneys, to avoid hearing. Nothing in this case is consistent with the fundamental principles expressed in *Hovey v. Elliott*, pp. 220-222.

CONCLUSION

"The law so abhors fraud that it will not allow technical difficulties of any kind to interfere to prevent the success of justice, right and truth." Lord Barron Pollock as quoted by *Bullard v. Zimmerman, et al.* 202 P. 730, 732.

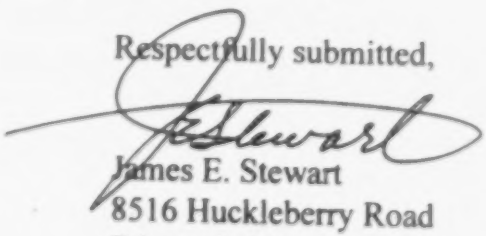
Without the default motion as a viable action when the U.S. as a defendant successfully refuses to answer and chooses to "otherwise plead" to avoid trial; when the U.S. relies upon fraud and extrinsic fraud, duress, and false arrest to avoid trial; when the U.S. remains in contempt of an order to compel discovery, and when the U.S. avoids all matters relevant to merit, greeting a collateral attack upon void judgments with the disallowed and tautological pleading of *res judicata*, otherwise remaining demurely silent in defense of those void judgments; when circuit courts fail to take over the management of cases naming the U.S. as defendant; when the courts allow summary judgment without regard to evidence; when they allow the U.S. to survive by extrinsic fraud a cross-motion for summary judgment; when they dismiss officers on the basis of fraudulent

denials and averments; and when the appellate courts remain stolidly resistant to all but technical contrivances, often providing the government's case for it in the judgment itself, the U.S. citizen or corporation has no civil way to protect life, liberty, or property. When the U.S. as defendant has been in default during the entire course of the litigation, has admitted by insincere participation in discovery, has successfully rested upon denials which are fraudulent upon their face, the process is a dangerous encroachment upon liberty and property rights. Clear, current precedent is badly needed.

The repose which speedy dismissals have promised in this case is premature. As this action stands, ill-gotten judgments have been granted to release the officers, prevent the trial, and deny remedy. Ignorance of precedent and lack of precedent allow the tax levy to stand.

The petitioner respectfully prays that the Supreme Court choose to review this case with a view toward granting remedy for the trespass and reverse the unjust tax levy.

Respectfully submitted,



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App. 1

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

James E. Stewart and Twashakarris, Inc., an Oklahoma Corporation d/b/a English Langauge Center Plaintiffs	)FILED MAY 09 1994)Robert D. Dennis, Clerk)U.S. Dist. Court,)Western Dist.)of Okla.
VS	)
	)CASE NO. CIV-94-675-W
The United States of America, the United States Department of Justice, Immigration and Naturalization Service, and Internal Revenue Service Defendants	))))))

COMPLAINT

COME NOW the Plaintiffs, James E. Stewart and Twashakarris, Incorporated, d/b/a English Language Center, with a cause of action for damages caused by the government of the United States of America and its agents and officers, the United States Department of Justice and its agents and officers, and the United States Immigration and Naturalization Service (INS) and it agents and officers who were both negligent of their duty as officers of the U.S. Department of Justice and while carrying out their duties

inflicted extensive damage to Plaintiffs by illegally closing their English language school and, out of negligence and malicious abuse of authority, sealing off the Plaintiffs from their only source of revenue and in the process denied Plaintiffs their Constitutional rights. This cause of action is based upon violations of the First Amendment to the Constitution of the United States of America guaranteeing protection from the "abridging of freedom of speech" and the right of "the people peaceably to assembly, and to petition the government for redress of grievances," the Fourth Amendment to the Constitution of the United States guaranteeing the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and the Fifth Amendment to the Constitution of the United States of America guaranteeing that no person "be deprived of life, liberty, or property, without due process of the law; nor shall private property be taken for public use, without just compensation." The proceedings as a whole constitute a violation of the Seventh Amendment to the Constitution of the United States of America guaranteeing that "the right of a trial by jury shall be preserved."

This case also arises under 28 U.S.C. 1331 as a civil action arising under the Constitution and laws of the United States.

The action also arises under 28 U.S.C. 1346(b) of the Federal Torts Claims Act for the commission of the following torts by the officers of the United States; conversion, trespass to realty, disparagement, abuse of process, and intentionally causing emotional distress. The 1974 Amendment to Section 2680(h) of the Federal Torts Claims Act includes abuse of process as a tort for which the government may be sued. Title 28 U.S.C. 2680(h) applies only to investigative or law enforcement officers of the United States who are defined as "any officer of the United States who is empowered by law to execute searches to seize evidence, or to make arrests for violations of Federal Law." The officers, acting as agents of the United States government, were all enforcement officers of INS; namely, James M. Woods, Ralph Translavina *[sic]*, Alfredo Arizola, and William J. Chambers.

Both Mr. Arizola and Mr. Translavina *[sic]*, who were "enforcement officers" for the Immigration and Naturalization Service, displayed badges and guns at the English Language Center

in performing their duties. Mr. Arizola represented himself at Central State University as a Federal Marshal and claimed to have a warrant for Plaintiff Stewart. Title 8 C.F.R. Chapter 1, Section 100.1 lists the Office of Enforcement's responsibilities as including "border patrol, investigations, detention and deportation and anti-smuggling activities." (Emphasis added.) Officers clearly can make searches and arrests for Federal crimes. Title 8 U.S.C. 1357 defines the powers of immigration officers and employees without warrant. When authorized under regulations prescribed by the Attorney General, those powers include interrogation and arrest. Title 8 C.F.R. Section 287.1 provides that "Any immigration officer is hereby authorized to exercise anywhere in the United States all the powers conferred by Section 287 of the Act." Section 287 is the Public Law Section which became 8 U.S.C. 1357, supra.

This action also arises under 42 U.S.C. 1983 which became applicable to federal officials through the United States Supreme Court case of Butz v. Economou, 438 U.S. 478 (1978). The above named officials acted in concert for the U.S. Government to harm Plaintiffs. In doing so they committed the following torts: by

malicious abuse of authority they converted private property to their own use, trespassed to realty, disparaged a lawful entity, abused process, unwarrantedly interfered with legitimate business relationships, misrepresented their persons and status as relates to their positions of employment with the government. Together the officers listed inflicted emotional distress upon Plaintiff Stewart.

This cause also arises under Bivens v. Six Unknown Named Agents of the Feceral Bureau of Narcotics, 403 U.S. 388 (1971). The Federal officials violated Plaintiff's First, Fourth, Fifth and Seventh Amendment Constitutional rights. The United States Supreme court in Carlson v. Federal Bureau of Prisons, 446 U.S. 14 (1980) held that a Bivens type remedy for the violation of a Plaintiff's Constitutional rights was available against federal officials even though the allegations could also support a suit against the United States under the Federal Torts Claims Act. The Court held a Bivens claim and a Federal Torts Claims Act claim to be compatible parallel claims.

STATEMENT OF FACTS

At noon on July 10, 1982, Ralph Translavina *[sic]*, an officer of the United States Immigration and Naturalization Service, arrived at English Language Center, then located at 1012 North Chartrand, Edmond, Oklahoma He stated, "Where's Stewart? I've come to shut you down". In the two hours between noon and two p.m. he contacted numerous city and Central State University officials. Arriving at two p.m., Plaintiff Stewart was able to assure the officer, Translavina *[sic]*, that the irregularities which he complained of at the school did not exist.

While the meeting was in progress between Plaintiff and Translavina *[sic]*, the Edmond Oklahoma Fire Marshall, at the behest of Translavina *[sic]*, found some violations of the Edmond Fire Code and informed Plaintiff that he could not continue operations beyond 60 days unless the school met all requirements of the Fire Code. Deciding to lease space from the Edmond Public Schools, Plaintiff Stewart moved the school from 1012 North Chartrand to 215 North Boulevard, space that was approved by the Edmond Fire Marshall.

Immigration and Naturalization Service District Director William Chambers demanded proof showing the English Language Center was not in violation of the Edmond Fire Code. This demand was met on time, and a sworn statement, contracts of lease for the new location, and Fire Marshal approvals were sent to the District Office of INS in Dallas, TX.

On October 29, 1982, Plaintiff received notice from the District Director's office in Dallas, Texas, that, since he had not complied with the District Director's demand, the approval of his school had been withdrawn irrevocably. Plaintiff phoned the office in Dallas and was unable to speak with the District Director. Plaintiff phoned the officer in charge of the Oklahoma City office, Mr. James M. Woods, and told him that he had complied with the District Director's demand and offered to deliver new sets of the papers as INS might direct.

Mr. Woods asked, "Did you send the papers by certified mail?"

Plaintiff answered "No, but I have something better, witnesses."

Mr. Woods said "If you don't have receipts to show that you sent the papers by certified mail, we will shut you down."

On November 1, 1982, Mr. Alfredo Arizola, an enforcement officer of Immigration and Naturalization Service, introduced himself as a U.S. Marshal to officials at Central State University, Plaintiff's place of employment as an English professor. He said that he had a warrant for Plaintiff. Accosting Plaintiff in the parking lot of the University, Mr. Arizola said, "I have a warrant for you," and handed Plaintiff a copy of the notice of irrevocable closing from District Director Chambers. Immediately prior to that, Mr. Arizola, in the presence of two armed Edmond policemen, had closed English Language Center for being in violation of the Edmond Fire Code, despite having been informed by the principal, Mr. Javad Dadgostari, that the school was no longer occupying those facilities which had been in violation of the Code and was now in approved space.

On November 2, 1982, at 9:00 a.m., Plaintiff spoke by telephone to Mr. Homer McCain of the Dallas District Office of

Immigration and Naturalization Service. Mr. McCain said, "By the way, Stewart, we found those papers you filed."

Plaintiff replied, "Fine. Now that you have torn the school house down, what do you propose to do to put it back together?"

Mr. McCain said "Go to the office in Oklahoma City, and they will give you a letter."

Plaintiff went directly to the office in Oklahoma City and received permission to continue issuing I-20's (the certificate necessary for an F-1 Visa) and at the same time received a citation to appear before an Immigration Judge (which he later learned was properly titled as a Special Inquiry Officer). The first date of the Special Inquiry Officer's appearance in Oklahoma was January 20, 1983. Needing papers filed by English Language Center called an I-17, which INS had mislaid, the Officer, Mr. Gary Burkholder, had to delay action until his next appearance, March 16, 1983. In the second appearance, INS still could not produce the papers necessary to the hearing. In May, upon his third appearance, the papers still unavailable, he declared all issues concerning the school closing to be moot.

At the conclusion of the hearing, through his attorney, Mr. Jon Sellers, Plaintiff requested a copy of the telex notifying embassies and consulates that the authorization of the school to issue I-20's held.

Later, learning that students were being turned back at the Consul General's office in Maricaibo, Venezuela, Plaintiff requested Mr. Translavina *[sic]* to phone the consul and tell him that the authorization held. His response was, "That would be a breach in protocol."

Plaintiff then phoned the consul and requested that he phone the Oklahoma City office. He said, "That would be a breach in protocol."

Plaintiff then telephoned Mr. McCain in Dallas who notified the Consul General in Maricaibo that the school's authorization stood; however, he did not notify any other consular officers. After this point, Plaintiffs made numerous requests to Mr. Woods as well as to others in INS who refused to send notice to cancel the unjustifiable closing. The notice which canceled the authorization in October 1982 was not effectively corrected until 1988 [actually

April 15, 1989. See Mr. Chandler's letter] when the present Director, Mr. William Chandler, interceded, thus apparently ending the effects of the tort, causing needless loss of revenue to the school and personal losses to the owner of the school.

BACKGROUND OF THE PRESENT COMPLAINT

On March 20, 1983, Plaintiff requested administrative remedy, but received no response. In a timely filing on October 19, 1984, James E. Stewart and Twashakarris, Inc. filed a damage suit in the First Western District Federal Court of Oklahoma, Judge Luther Eubanks presiding, case number CIV-84-2581-E. As president of the corporation and holder of all stock, Plaintiff filed the case as a pro se litigant. The U.S. Government had, by statute, sixty days to answer and failed to do so. Plaintiff filed a Motion for Default. Instead of ruling on the motion at bar, Judge Eubanks dismissed the cause sua sponte, without notice and without hearing on the matter, stating that James E. Stewart was not, to his knowledge, a member of the Federal bar. To remedy this possible deficiency, on May 11, 1985, Plaintiff, by and through his attorney, Grover Miskovsky, who was a member of the Federal bar, filed a

brief in support of motions to amend and for relief from judgment because the possible error of the pro se representation had been remedied.

Plaintiff then, by and through his attorney, Jami L. Stewart, a member of the Federal bar, filed an appeal in the Federal Court of Appeals of the Tenth District in Denver, case number 85-1913. After considering the matter for thirteen months, the appellate court ruled that Plaintiff should be allowed to refile the case. Plaintiff filed his amended complaint by and through his attorney, Jami L. Stewart.

The First Western District U.S. Federal Court in Oklahoma assigned Judge Ralph G. Thompson to the case, case number 87-362-T. After entertaining numerous motions for dismissal or summary judgment by the defense, Judge Thompson dismissed the case because of an Oklahoma statute which required refiling within one year, time which expired while the courthouse was sealed to Plaintiff by Judge Eubanks and while the case was under appeal.

Relying upon deceitful pleading in a motion by the U.S. Government attorney, Judge Thompson dismissed the matter of the

claim prior to the expiration of the Oklahoma statute of limitations called the "savings statute" but gave permission to refile for damages inflicted after that date. Although the filing of the complaint in 1984 tolled the statute of limitations, Judge Thompson, relying upon deceitful pleading filed by Defendant Bradford, treated the matter before him as a new lawsuit instead of continuing action concerning a tort resulting in continuing damages.

Plaintiff appealed Judge Thompson's dismissal in the U.S. Tenth Circuit Court of Appeals. The Appellate Court upheld Judge Thompson's ruling.

The business losses resulting from the INS officers' tortious actions were claimed by Plaintiff as deductions on his personal income tax forms for 1985, 1987, and 1988. Internal Revenue Service disallowed the deductions because of the involvement of a corporation. IRS claimed that Plaintiff had been paying the taxes of another entity, his corporation. In defending his tax position before Federal Tax Court, Plaintiff discovered that, through the period in question, his corporation, Plaintiff Twashakarris, Inc., had failed to pay Oklahoma franchise taxes and had its powers as a corporation

suspended under Oklahoma law. By 68 Okla.Stat. §Twashakarris, Inc., could neither sue nor defend. Therefore, the officers of the corporation stood before Oklahoma law as partners. Since all the stock was owned by Plaintiff Stewart, he should have been taxed as a sole proprietorship and allowed deductions.

The U.S. Government's position is that, despite a very clear statute which removes all powers, responsibilities, and liabilities of the corporation and transfers these to the officers, the corporation still exists for tax purposes. The U.S. Tax Court, basing its decision upon laws of Delaware and Tennessee, not the state of Oklahoma which granted the charter, refused to allow the deductions. None of the case law cited in the tax case involved a situation in which the government itself had caused the losses. Plaintiff Stewart also claims the deductions on the basis of loss due to confiscation by a foreign government, arguing that, if business losses are deductible when confiscated by a foreign government, the losses should certainly be allowed when a business is confiscated by one's own government in violation of the U.S. Constitution.

App. 15

SPECIAL CAUSE OF ACTION

Judge Luther Eubanks dismissed the original complaint sua sponte without notice or hearing. By his improper sua sponte dismissal, Judge Eubanks was required by the Federal Claims Act and legal precedent to give at the very least three days notice and allow a hearing. Because Judge Thompson dismissed the case as refiled for being out of time despite the fact that the time for refiling was tolled by the original complaint, Plaintiff's access to the Court and the opportunity to a judgment based upon the merits of their case, pursuant to their Constitutional rights and remedy for wrongs clearly established by the Federal Torts Claims Act, were thrown aside. This gross usurpation of judicial authority was not only in error in point of fact, but it denied Plaintiffs the rights guaranteed them by the Fifth and Seventh Amendments to the Constitution of the United States of America.

Because the Tenth Circuit Court of Appeals upheld this violation of due process of Judge Thompson, Plaintiffs James E. Stewart and Twashakarris, Inc., hereby claim the right of access to the Court, the right of judgment on the merits of a cause of action,

timely filed, according to the Federal Rules of Civil Procedure. This claim is based upon the theory of collateral attack. Collateral attack is the only resort of a party who has been denied due process, hearing, remedy when the following conditions exist: (1) gross violation of due process, (2) the lack of knowledge of information, to either party or to the Court, upon which judgment could be based, and (3) extrinsic fraud.

Because this action has not been judged by a hearing on the merits due to gross violation of due process, the absence of essential fact, extrinsic fraud, the jurisdiction of both Judge Eubanks and Judge Thompson should be set aside and treated as void.

REMEDY

On the basis of a tort with continuing damaging effect from November 1, 1982, James E. Stewart and Twashakarris, Inc., hereby claim the following:

(1) Actual damages inflicted in the amount of $3,100,000.00 against the United States Government for reasons stated herein above. This amount is greater than that claimed in the

prior filings because the tort set in motion damages with continuing effect, and continue into the present year, over ten years later. We respectfully request permission to reflect the results of the tort and its continuing effect, the extent of which was unknown at earlier filings.

(2) Further, it is the prayer of Plaintiffs that the Internal Revenue Service be enjoined from collecting taxes claimed under the pretext that a defunct Oklahoma Corporation has benefit of tax deductions during a time when the corporation has, by Oklahoma law, no obligation to pay taxes to any claimant, said deductions resulting from the tort perpetrated upon Plaintiffs by officers of the U.S. Government whose actions were not impeded nor compensated as the law requires.

(3) It is the further prayer of Plaintiffs that the Court order INS and the U.S. Department of State to notify all United States Embassies and Consulates to honor the duly authorized Certificates for Nonimmigrant Visas (1-20's), issued by English Language Center.

(4) That the case currently pending before the Commissioner of Internal Revenue Service for 1985, 1987 and, 1988 be consolidated with this matter so that the question of the rights, privileges and responsibilities, common to all cases, may be decided at once.

(5) That the void judgments herein above addressed be recognized as such by the Honorable Court so that they will cease to cause damage to Plaintiffs and public embarrassment to a people who have consented to be governed by law under the Constitution.

Further, Plaintiff prays not.

/s/ J E Stewart
James E. Stewart, Pro Se
1015"C"WaterwoodParkway
P.O. Box 1866
Edmond, OK 73083
(405)348-7602

App. 19

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

JAMES E. STEWART, and	) FILED DEC 27 1994
TWASHAKARRIS, INC.,	) Robert D. Dennis, Clerk
Plaintiffs,	) U.S. Dist. Court,
	) Western Dist. Of Okla.
vs.	) /s/ By [Illegible initials] Deputy
	) No. CIV-94-675-W
UNITED STATES, et al.,	)
Defendants,	) DOCKETED

ORDER

On July 8, 1994, defendants United States of America, United States Department of Justice, United States Department of Immigration and Naturalization Service (INS) and Internal Revenue Service (IRS) moved for summary judgment against plaintiff Twashakarris, Inc. d/b/a English Language Center (ELC) and its president, plaintiff James E. Stewart.[1] On July 22, 1994, the defendants filed a reply, which as the parties were advised on August 17, 1994, the Court considered to be the response to the plaintiff's motion.

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[1] Plaintiff Stewart is pro se. He also appears on behalf of ELC. Corporations may appear in a court of record only by an attorney.

On August 22, 1994, the plaintiffs filed a Motion for Declaratory Judgment. The defendants responded and argued that the motion was an unauthorized pleading.

The Court has reviewed the record in its entirety. And, based upon its review, the Court now resolves the pending motions.

In 1982, ELC was closed by INS agents. As a result, the plaintiffs' financial condition was adversely and significantly affected. On October 19, 1984, Stewart filed suit on ELC's behalf against the INS and certain INS officers and agents. Twashakarris, Inc. v. INS, No. CIV-84-2581-E. On January 10, 1985, the Honorable Luther B. Eubanks sua sponte dismissed the case without prejudice on the grounds Stewart, who is not an attorney, could not represent ELC. An appeal was taken and on March 13, 1986, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal. Twashakarris, Inc. v. INS, No. 85-1913 (10th Cir. 1986).

On October 29, 1987, ELC and Stewart filed a second action. Twashakarris, Inc. v. United States, No. CIV-87-362-T. On January 30, 1989, the Honorable Ralph Thompson dismissed the action in part on the grounds that certain claims were time-barred.

Judge Thompson directed the plaintiffs to amend their complaint to delete the dismissed claims and to plead the remaining claims in accordance with applicable Federal Rules of Civil Procedure. On March 29, 1989, Judge Thompson found the plaintiffs had taken no action in response to his Order of January 30, 1989, and he dismissed the remaining claims with prejudice. On November 22, 1989, the Tenth Circuit affirmed the dismissal. Twashakarris, Inc., v. INS, 890 F.2d 236 (10th Cir. 1989).

Stewart reported as deductions on his personal income tax returns for years 1985, 1987 and 1988 the losses he had allegedly sustained as a result of ELC's closing. IRS challenged the deductions and the United States Tax Court determined the losses, if any, belonged to the corporation and not Stewart. Stewart v. Commissioner, 63 TCM 2707 (No. 28499-89)(April 8, 1992). Stewart appealed and on February 23, 1993, the Tenth Circuit affirmed the Tax Court's decision. Stewart v. Commissioner, No. 92-9007 (10th Cir. 1993).

In the instant complaint, the plaintiffs have described the events surrounding the closing of ELC by government officers in

1982 which gave rise to the earlier cases and have sought a hearing on the merits of these cases (since each was terminated prior to adjudication on its merits). The plaintiffs have sought monetary relief for the damages allegedly occurring from November 1, 1982, to date as well as injunctive relief. In particular, the plaintiffs have sought to enjoin the IRS from disputing the deductions claimed by plaintiff Stewart for tax years 1985, 1987 and 1988.

To prevail in this case, the plaintiffs must overcome the bar of the earlier judgments. In an attempt to do so, the plaintiffs have argued the judgments are void and unenforceable because they resulted from a gross violation of due process, extrinsic fraud and inaccurate and incomplete factual bases.

This Court is not the appropriate forum for these challenges. It is not empowered to review the decisions of the United States Court of Appeals for the Tenth Circuit or the lower court cases giving rise to the circuit decisions to determine if factual or legal errors have occurred.

Accordingly, the Court

(1) GRANTS the defendants' Motion for Summary Judgment filed on July 8, 1994;

(2) DENIES the plaintiff's Motion to Deny Defense Res Judicata and Motion for Summary Judgment file on July 22, 1994;

(3) DENIES the plaintiff's Motion for Declaratory Judgment filed on August 22, 1994; and

(4) ORDERS that judgment in favor of the defendants issue forthwith.

ENTERED this 27th day of December, 1994.

/s/ Lee R West
LEE R. WEST
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

JAMES E. STEWART, and TWASHAKARRIS, INC., Plaintiffs	)	FILED DEC 27 1994 Robert D. Dennis, Clerk U.S. Dist.Court, Western Dist. of Okla.
vs.	)	/s/By [Illegible initials] Deputy
UNITED STATES, et al., Defendants.	)	No. CIV-94-675-W

JUDGMENT

Having determined that all defendants are entitled to summary judgment, the Court enters judgment in favor of defendants and against the plaintiffs, James E. Stewart and Twashakarris, Inc. d/b/a English Language Center.

Dated at Oklahoma City, Oklahoma, this 27th day of December, 1994.

/s/ Lee R West
LEE R. WEST
UNITED STATES
DISTRICT JUDGE

Entered in Judgment Docket on DEC 27 1994

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JAMES E. STEWART,	)F I L E D
Plaintiff-Appellant,	)United States
and	)Court of Appeals
	)Tenth Circuit
TWASHAKARRIS, INC.,	)JUL 25 1995
d/b/a English Language Center,	)Patrick Fisher
an Oklahoma corporation,	)Clerk
Plaintiff,	)No. 95-6086
v.	)(D.C. No. CIV-94-675-w)
	)(W.D. Oklahoma)
UNITED STATES OF	)
AMERICA;DEPARTMENT	)
OF JUSTICE; IMMIGRATION	)
& NATURALIZATION	)
SERVICE; INTERNAL	)
REVENUE SERVICE	)
Defendant-Appellees.	)

ORDER AND JUDGMENT*

Before ANDERSON, BALDOCK and BRORBY, Circuit Judges.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

James E. Stewart, a pro se litigant, and a corporation, Twashakarris, Incorporated, which is represented by the pro se litigant, appeal an adverse summary judgment.

We first dismiss the corporate defendant's appeal. The corporation is represented by Mr. Stewart who is not an attorney. A corporation may appear in court only through an attorney. The corporation thus failed to perfect its appeal and failed to prosecute its appeal.

Mr. Stewart commenced this action based upon events which occurred in 1982 and which were previously litigated. The underlying facts were raised through Defendant's motion for summary judgment and the trial court concluded the earlier judgments were a bar to this suit. It is this decision which Mr. Stewart now appeals.

Mr. Stewart seeks to avoid the bar of the previous judgments by asserting the previous judgments are void. In short he argues the previous litigations were meaningless as the judgments rendered therein are void and he asserts he is now entitled to relitigate the matters previously raised. He argues the previous judgments are void and unenforceable because they resulted from a gross violation of due process, extrinsic fraud and inaccurate and incomplete factual bases. In fact, this is the second time Mr. Stewart has filed an action seeking to relitigate the issues which were previously decided against him. Mr. Stewart fails to realize this civil action is not the appropriate forum to raise these challenges. There comes a time when litigation ceases. That time has long since passed.

Mr. Stewart has failed to convince this court that he may relitigate the issues decided in the prior adjudications.

The judgment of the trial court is affirmed for substantially the same reasons set forth in the trial court's order of December 27, 1994, a copy thereof being attached hereto.

Entered for the Court:
[not signed] **WADE BRORBY**
United States Circuit Judge

[For a copy of the trial court's order of December 27, 1994, see App 20 ff.]

App. 28

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC.	)	FILED 1-10-85
Plaintiff,	) /s/	[A] Rogers
v.	)	A. Rogers
	)	Clerk
IMMIGRATION AND	)	
NATURALIZATION	)	CIV-84-2581-E
SERVICE OF THE	)	
UNITED STATES OF	)	
AMERICA, et al,	)	
Defendants.	)	

ORDER OF DISMISSAL

This case was filed on October 19, 1984 in the United States Court for the Western District of Oklahoma. The same appears to be filed for and on behalf of Twashakarris, Inc. by James E. Stewart, its president.

Our check of the records in the office of the Clerk fails to disclose that Mr. Stewart is admitted to the practice of law in this district and it is elementary that a person cannot represent a legal entity in a way such as is herein attempted without being lawfully licensed to practice law.

ACCORDINGLY,

This case and any and all causes of action attempted to be filed are sua sponte dismissed.

ORDERED this 10th day of January, 1985.

/s/ Luther B. Eubanks
Luther B. Eubanks
UNITED STATES
DISTRICT JUDGE

Entered in Judgment Docket on 1-10-85

App. 30

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., et al.,	)FILED MAR 29 89
Plaintiffs,	)
vs.	)Robert D. Dennis
	)Clerk, U.S. District Court
THE UNITED STATES	)Western District of Oklahoma
OF AMERICA, et al.,	)/s/ [Initials illegible]
Defendant.	) CIV-87-362-T

ORDER

Defendants have filed a motion seeking the dismissal of this action and sanctions premised on the plaintiffs' failure to comply with a court order entered on January 30, 1989. On that date the court directed the plaintiffs to amend their complaint within fifteen (15) days. Because the plaintiffs did not amend, the defendants filed this motion , which is deemed confessed because of the plaintiff's failure to respond. Local Rule 14(A).

Although dismissal is an appropriate action, sanctions are not warranted under the facts of this case. A plaintiff cannot be compelled to amend his complaint.

Accordingly, the defendants' motion for dismissal and sanctions is granted in part and denied in part. This action is dismissed with prejudice.

IT IS SO ORDERED this 29th day of March, 1989.

/s/ [Illegible] Thompson
[RALPH G. THOMPSON]
UNITED STATES
DISTRICT JUDGE

Entered in Judgment Docket on 3-29-89

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., a/k/a ENGLISH LANGUAGE CENTER and JAMES E. STEWART, President and Director, Plaintiffs,	)	FILED JAN 30 1989 ROBERT D. DENNIS CLERK, U.S. DIST COURT
v.	)	/s/ [Initials illegible]
THE UNITED STATES OF AMERICA and THE IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES OF AMERICA and Certain Officers, et al., Defendants.	)	CIV-87-362-T

ORDER

Plaintiffs, Twashakarris, Inc., a/k/a English Language Center, and James E. Stewart, instituted this action against the United States, the Immigration and Naturalization Service ("INS) and INS officers seeking to recover for the alleged violation of their First and Fifth Amendment rights. Plaintiffs assert claims pursuant to 42 U.S.C. § 1983, the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq., and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The defendants have moved to dismiss or, in the alternative, for summary judgment on

the grounds of the statute of limitations and absolute, qualified and sovereign immunity. The parties were directed to supplement their briefs and, having received their additional authorities, the court concludes that the plaintiffs' claims premised on conduct occurring before 1984 against the United States of America and the individual defendants are barred by the statute of limitations.[1]

The pertinent dates are as follows:

Alleged unconstitutional/ tortious acts	July through November, 1982
Administrative claim (filing date)	3/20/83 (6-month lapse 9/20/83)
First lawsuit	10/19/84
Dismissal of first lawsuit	1/10/85
Appellate decision (affirming dismissal)	3/13/86
Second lawsuit	2/19/87

Plaintiffs timely filed their first lawsuit on 10/19/84. That was within the two years and the six month limitations periods

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[1] The court previously concluded that the plaintiffs' claims which were based on alleged wrongs occurring in 1986 and possibly 1984 were not time-barred.

specified by 28 U.S.C. § 2401 for the plaintiffs' claims against the United States. Because the INS did not make a final disposition of the plaintiffs' claim within six months after it was filed, the filing date for the plaintiffs' complaint constitutes the date their claim was "finally denied" for purposes of the Federal Tort Claims Act. Miller v. United States, 741 F.2d 148 (7th Cir. 1984). See 28 U.S.C. § 2674(a). Therefore, the plaintiffs had six months under section 2401(b) from 10/19/84 to institute their action against the United States. Even if plaintiffs' argument that the statute of limitations was tolled during their appeal is adopted, the plaintiffs failed to file their lawsuit within six months of the appellate decision, or by 9/13/86.

The only basis for concluding that the plaintiffs' lawsuit is timely, is if the one-year savings statute provided by Oklahoma law, 12 Okla. Stat. § 100, is applicable and ran from the date of the appellate decision. However, the one-year savings statute does not apply to claims filed under the Federal Tort Claims Act. See Vega-Velez v. United States, 800 F.2d 288 (1st Cir. 1986); Jastremski v. United States, 737 F.2d 666 (7th Cir. 1984); Smith v. United States,

588 F.2d 1209 (8th Cir. 1978); Casias v. United States, 532 F.2d 1339 (10th Cir. 1976). See generally Anderberg v. United States, 718 F.2d 976 (10th Cir. 1983), cert. denied, 466 U.S. 939 (1984). Accordingly, the court concludes that the plaintiffs' claims against the United States of America, based on conduct that occurred in 1982, are barred by the statute of limitations and, therefore, must be dismissed with prejudice. To this extent, the United States' motion for summary judgment is granted.

The court also concludes that the plaintiffs' § 1983 and their Bivens claims against the individual defendants, which are premised on illegal conduct that occurred before 1984, are precluded. Plaintiffs may not assert their § 1983 claims against the individual defendants because, as federal officials, they were not acting under color of state law. Gonzalez v. Department of Army, 718 F.2d 926, 931 n.6 (9th Cir. 1983). Their Bivens claims are barred by the statute of limitations.

The parties concur that the Plaintiffs' Bivens claims are governed by the two year limitations period established by 12 Okla. Stat. § 95(3) and that Oklahoma's one-year savings provision, 12

Okla. Stat. § 100, is applicable. They disagree, however, as to the date when the savings period commences: plaintiffs assert it is March 13, 1986, the date of the appellate decision, while defendants assert it is January 10, 1985, the date of dismissal of the plaintiffs' first lawsuit.

The defendants are correct. The one year period began to run on November 10, 1985.[2] See Chandler v. Denton, 741 P.2d 855, 860, 863 (Okla. 1987). Therefore, because plaintiffs did not file their second action until February 19, 1987, their claims premised on conduct that allegedly occurred in 1982 are barred.

The court is aware that the Tenth Circuit stated in its opinion, Twashakarris, Inc. v. Immigration and Naturalization Service of the United States of America, No. 85-1913 (10th Cir. March 13, 1986), that "[t]he trial court's initial order was not a dismissal with prejudice, and appellants are not estopped to refile their complaint." Slip op at 4. However, the court does not interpret this to mean that the Tenth Circuit was holding that the plaintiffs'

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[2] The period may have commenced on April 18, 1985, the date of denial of the plaintiffs' motion to amend. However, plaintiffs' pre-1984 claims are barred regardless of whether the date of the order of dismissal or the order denying the motion to amend is used.

claims were timely. The issue of the statute of limitations was not presented to the appellate court. By this statement, it appears the Tenth Circuit was stating, that even though it was affirming the trial court's dismissal of the plaintiffs' first lawsuit, that the dismissal was without prejudice, thus enabling the plaintiffs to refile it, if it was timely and otherwise properly brought.

Defendants also have asserted that they are protected from liability by the doctrine of qualified immunity. Dismissal is inappropriate on this basis at this time, because the court is ordering the plaintiffs to amend their complaint for the last time with fifteen (15) days. Plaintiffs are directed to delete the claims which have been dismissed by this and the court's prior orders and to revise their remaining claims so they comply with the Federal Rules of Civil Procedure, specifically Rules 8(a) and 10(b). If appropriate, the defendants may reassert their qualified immunity defense subsequent to the required amendment.

Accordingly, the plaintiffs' § 1983 and their claims against the United States and claims against the individual defendants that are based on conduct that occurred prior to 1984 are dismissed with

prejudice. To this extent, the defendants' motions are granted. The plaintiffs' claims against the defendants that are premised on subsequent conduct are not dismissed. To this extent the defendants' motions are denied.

IT IS SO ORDERED this 30th day of January, 1989

/s/ [Illegible] Thompson
[RALPH G. THOMPSON]
UNITED STATES
DISTRICT JUDGE

App. 39

[This memorandum describes Mr. Translavina's *[sic]* visit to the school, which he denies]

MEMO

To : Mr. James E. Stewart
From: Javad Dadgostari
Subject: INS Inspection
Date: July 8, 1982

About 11:00 o'clock this morning as I was leaving the office, a gentleman walked in and, as soon as he saw me, said "You are Mr. Dadgostari...". He introduced himself by flashing his I.D. Card in a bellicose manner. I intended to shake hands with him but I was so taken aback by his unapproachable demeanor that I changed my mind.

John and I directed him to John's room. There, he refused to sit down and said, "I am here to inspect your school, you have some very serious problems, and I'm afraid we'll have to shut you down." At this point he sat down and began asking questions of John and me, even though he had previously stated that he would discuss the situation with Mr. Stewart, the "official representative of the school".

He asked for the teachers' credentials, the student files, the list of prospective students who have been issued I-20's, a financial statement, and a list of current students.

He then asked me to show him the classrooms. Upon seeing the number of desks in each classroom and assuming that each desk represented a student, he intoned, "You are in violation of the fire code."

Two hours later, about 1:00 p.m., two officers from the Fire Dept. arrived to inspect our school for fire code violations.

/s/ J Dadgostari

[Memorandum to attorney concerning Mr. Translavina's *[sic]* visit]
[ELC letterhead]

Oct 29, 1986

Jami,

This is a copy of the sheet of paper (notes) that Translavina *[sic]* had with him on the initial raid of July 8, 1982. The typed portions are extracted from the list of criteria in the then relevant CFR 214.3. Items 13 and 14 were added on the site. The other inked notes are in either Beverly's hand or mine (upper left). The original is with the papers that I took to Flash (Bob Alexander). I thought that you might need the copy for your file.

/s/ O. D.
[James E. Stewart]

[Initials for familiar name sometimes used for James E. Stewart, meaning 'Ole Dad']

[Mr. Translavina's *[sic]* notes. Italics are handwritten notes]

PHYSICAL INSPECTION:

1. size of physical plant -*get size of room sq. cla [illegible]*
2. Nature of its facilities for study and training *description*
3. Educational, vocational, or professional qualifications of the teaching staff *all qualif*

John (4. Salaries of the teaching staff.

5. Attendance and scholastic grading policy *74% +500 on TOEFL add one of grade sheets*
6. Amount and character of supervisory and consultative services available to students and trainees [*illegible*] *and counseling*

John 7. Finances- certified copy of accountant's last statement of school's net worth, income, and expenses *See John ([illegible])*

8. Credits have been and are accepted unconditionally by at least three institutions of higher [illegible]

9/ Does it meet the compulsory attendance requirements of the State. *yes*

10. School catalogue or pamphlet *yes*

11. Licensed by the [illegible]

12. [illegible...line scratched over with pen]

GR[illegible...line scratched over with pen]

[illegible...line scratched over with pen]

A N D FAILURE TO EMPLOY QUALIFI[illegible...]

A N D FAILURE TO MAINTAIN P[illegible...]

13. Complying [illegible] housing codes.

14. " *[illegible] fire* " .

App. 43

[Edmond Fire Department Response to Mr. Translavina's*[sic]* Visit]

[Edmond Fire Dept. letterhead]

To: James Stewart Date: July 12, 1982

English Proficiency Program

1012 N. Chartrand, Suite N

Edmond, Oklahoma 73034

On July 8, 1982, a fire inspection of your premises revealed violation(s) and/or fire hazard(s). Removal or correction of the violations will greatly reduce the chance of a fire on your premises and help insure that the premises are safer from a fire and life safety standpoint. You are hereby directed to make the necessary correction(s) and/or addition(s) of the following in compliance with the Fire Prevention Code of the City of Edmond, on or before August 9, 1982:

For any further information, questions, etc., please contact this department.

1). Any area used for general storage, boiler or furnace room, janitor closet, maintenance shop, laundry and/or kitchen shall be separated from other parts of the building with enclosures having not less than one (1) hour fire resistance rating. All openings shall be protected with self-closing, solid core doors.

2). Any interior corridor/hallway shall be of construction having not less than a one hour fire resistance rating. All doors in this corridor/hallway shall be self-closing, solid core.

3). An approved manually operated fire alarm system shall be

installed in the three (3) units. This system shall consist of alarm panel, alarm bell and pull stations at the designated exits.

4). The extension cords used to provide power to the front overhead lighting shall be replaced with the proper wiring as to conform to the National Electric Code.

5). Provide and install one (1), ten pound ABC dry chemical type fire extinguisher in each unit. These extinguishers are to be permanently mounted in unobstructed locations.

/s/ David A Wiist
DAW/cd DAVID A. WIIST, MAJOR

App. 45

NOTICE OF INTENTION TO WITHDRAW SCHOOL APPROVAL FOR ATTENDANCE OF NONIMMIGRANT STUDENTS UNDER SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT AS AMENDED

UNITED STATES OF AMERICA	*	
	*	
In the Matter of:	*	
	*	
ENGLISH LANGUAGE PROFICIENCY PROGRAM	*File No. DAL 214.3/684-P *Oklahoma City, Oklahoma *(DAL)	
	*	
Respondent:	*	
	*	
JAMES STEWART Director, EPP P. O. Box 1866 1212 N. Chartrand Edmond, Oklahoma 73083	*	Date: **AUG 20 1982**

IT IS ALLEGED THAT:

1. You have failed to maintain proper facilities for instruction.

DISCUSSION: The English Proficiency Program under the directorship of Mr. B. Azarmi was approved by Immigration and Naturalization Service to accept nonimmigrant students and issue Forms I-20 on January 19, 1979. This school was then located at the French Market Mall, N.W. 63 Street and May Avenue, Oklahoma City, Oklahoma. The school subsequently relocated to its present location under the directorship of James Stewart.

An inspection of the facility by an Immigration officer on July 8, 1982, disclosed among other things possible, violations of

zoning and fire codes and regulations. Consultation with the City of Edmond Zoning Department and Fire Department indicates that the school is in violation of such regulations.

In a precedent decision of the Immigration Service, Matter of Peninsula School, Ltd. 11 I&N, Dec. 411, a school was denied approval to accept nonimmigrant students where the school was in violation of local fire and safety requirements.

In considering school applications for permission to accept nonimmigrant students, the Immigration Service has the responsibility of ensuring that minimal standards are met. These standards relate not only to licensing, accreditation, curriculum, etc., but also to safety, zoning, and fire regulations to ensure that the institution provides safe and proper facilities for instruction.

Based on inspection of your school by city zoning and fire officials, it appears that you are not maintaining proper and safe facilities for instruction.

You are hereby notified that you have thirty (30) days from the date of service of this notice to submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn. Within said period of time you may request in writing, a hearing before an Immigration Judge in support of or in lieu of a written answer.

You may have the assistance of or be represented by counsel or representative of your choice qualified under Part 292 of the Immigration and Nationality Act, as amended without expense to the Government, in the preparation of your answer or in connection with the hearing. Your attorney may also present such evidence on your behalf as may be relevant to the withdrawal.

Be advised if your answer admits all the allegations in this notice, or if no answer is filed within the thirty day period, or if no hearing is requested within such period, the District Director shall withdraw the approval previously granted and shall so notify the respondent.

No appeal shall lie from the District Director's Decision.

/s/ William J Chambers
WILLIAM J. CHAMBERS
DISTRICT DIRECTOR
DALLAS, TEXAS

CERTIFIED MAIL: RRR

AUG 20 1982

NOTICE OF INTENTION TO WITHDRAW
SCHOOL APPROVAL FOR ATTENDANCE
OF NONIMMIGRANT STUDENTS UNDER
SECTION 214 OF THE IMMIGRATION
AND NATIONALITY ACT AS AMENDED

[Cover for the compliance papers] [ELC letterhead]

August 31, 1982

William J. Chambers, District Director
Immigration and Naturalization Service
1100 Commerce
Room 6A21
Dallas, Texas 75242

Sir:

As suggested by page two of your letter dated August 20, 1982, I am hereby submitting my formal declaration under oath and supportive documentary evidence showing why approval of English Proficiency Program should not be withdrawn. Our classes are now being taught in facilities which we have leased from the Edmond Public School System. I am enclosing a photocopy of the rental contract and a photocopy of the letter indicating that this space has been approved by Major David a. Wiist, Fire Marshal. Although Major Wiist knows the school by its former use and refers to it as the Edmond Eighth Grade Center, the public school officials now call it the Special Services Center. Our classrooms are on the second floor of that building.

If you require anything further from me, please notify me.

Cordially yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

State of Oklahoma, County of Oklahoma

Before me, the undersigned, a Notary Public, in and for said County and State, on the 31*[sic]* day of August, 1982, personally appeared James E. Stewart to me known to be the identical person who executed the within and foregoing oath to me that he executed the same as his free and voluntary act and deed for the use and purpose therein set forth.

Given under my hand and seal the day and year last written above.

My commission expires December [illegible]

/s/ John Edward Elliott
John E. Elliott
Notary Public

[Compliance Papers: Acceptance of offer to lease a new facility, the location actually closed because of fire code violations at 1012 N. Chartrand]
[Edmond Public Schools letterhead]

August 5, 1982

Dr. James E. Stewart, Director
English Language Center
P.O. Box 1866
Edmond, OK 73034

Dear Dr. Stewart:

In response to your letter to Dr. Rowley, dated July 26, 1982; please be advised that the following conditions will apply to the rental of classroom space at the Special Services Center located at 215 N. Boulevard:

1. Four classrooms shall be rented initially with the possibility of renting additional space if the space is available.

2. School activities will be limited to the classrooms designated for rental.

3. Telephone service must be furnished at the renter's expense.

4. The hours of operation shall be from 8:00 a.m. until 3:00 p.m. Monday through Friday, excluding holidays.

5. Rental fee shall be $20.00 per day for each classroom. Rental on four classrooms will be $80.00 per day or $1600.00 per month. The custodial fee will be $10.00 per day or $200.00 per month. The total amount for rental and custodial service shall be $1800.00 per month.

The rental and custodial fee will be payable in advance on the first day of each month. The August fees are due now in the amount of $1800.00.

6. Edmond Public Schools assumes no liability for personal injury to students or staff or for property loss due to fire, theft, storm damage or vandalism.

7. Your contact in the building will be Dr. Kenneth Smith, Director of Special Services.

The conditions stated above are acceptable

/s/ J E Stewart
James E. Stewart, Director

FOR EDMOND PUBLIC SCHOOLS

/s/ Bill E. Martin
Bill E. Martin, Ed. D.
Asst. Supt.,
Support Services

BEM:mr

[Compliance Papers: Acceptance of offer to lease facility for administering tests]

[Edmond Lodge (Elks) letterhead]

July 28, 1982

TO WHOM IT MAY CONCERN:

The English Language Center has been granted temporary use of our facilities located .75 miles East of I35 on Waterloo Road in Logan County. Our facilities have lighted fire exits and have fire protection through the Woodcrest Volunteer Fire Department.

Very truly yours,

/s/ Lester R. [Illegible]
Lester R. [Illegible]
Exalted [Ruler]
[Two lines of salutory closing are illegible]

[Compliance Papers: Letter of approval of new facility]
[Edmond Fire Department letterhead]

July 26, 1982

James E. Stewart
English Language Center
P. O. Box 1866
Edmond, Oklahoma 73034

Dear Mr. Stewart:

Per our conversation, the Edmond Eighth Grade Center located at 215 North Boulevard will meet all fire code requirements as to your use for an educational facility.

The temporary use of the Edmond Elks Lodge does not require an inspection from this department because the building is out of the Edmond City Limits.

For any further information, questions, etc., please contact this office.

Sincerely,

/s/ David A. Wiist
David A. Wiist
Major

DAW/cd

cc: Ronnie Lloyd, Fire Chief
Ron Williamson, Fire Marshal

[Letter which was received near the end of October after compliance papers had been timely filed] [US Dept. of Justice, INS letterhead]

OCT 14 1982

Mr. James Stewart, Director
English Language Center
P. O. Box 1866
Edmond, OK 73083

Dear Mr. Stewart:

On August 20, 1982, you were advised that it was the intention of this Service to withdraw approval of your school for attendance by nonimmigrant students under Section 214 of the Immigration and Nationality Act. Since you have failed to file an answer to our notice, or request a hearing before the Immigration Judge, the approval previously granted English Language Proficiency Program for attendance by nonimmigrant students is withdrawn.

Pursuant to this notice you may not issue any further Form I-20's to students desiring to attend your school either by transfer or initial admission. Those nonimmigrant students presently attending your school are granted a period of 30 days from the date of this letter to apply for transfer to a school approved by the Attorney General for attendance by nonimmigrant students. You must advise your students accordingly.

There is no appeal to this decision.

Sincerely,

/s/ William J. Chambers
William J. Chambers
District Director

CERTIFIED MAIL: RRR
[Correspondence relative to the lost compliance papers]
[ELC letterhead]

October 28, 1982

Mr. Jim Woods
Immigration and Naturalization Service
200 N.W. 4th Street
Federal Building & U.S. Courthouse
Room 4423
Oklahoma City, Oklahoma 73102

Dear Mr. Wood *[sic]*,

I filed documents and declaration with William Chambers at the Dallas office as directed. Apparently they are filing in Dallas rather than sharing with you. I have phoned Dallas. The supervisor there says that the file is in Oklahoma City. Please help me get this minor matter straightened out.

I am enclosing copies of what I sent August 31, 1982.

Cordially yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

AFFIDAVIT

Under penalty of perjury, I hereby swear and affirm on this 23rd day of November, 1982

On November 1, 1982 my initial 9 AM class was slightly disrupted near its completion by a verbal interchange between two Venezuelan female students, one who arrived late and one who had been to class on time.

During my 10AM class absences were excessive-of the seven enrolled students, only two were present. Javad came into my room and told me that anyone who did not come into the classroom from the hall within three minutes would be counted absent. Outside the class I heard many voices as I completed my advanced class with only two students.

Shortly after this we had a meeting and it was relayed to me that Immigration was threatening us with shutdown due to a form regarding fire codes and relocation that English Language Center had sent to the Dallas INS office but that Oklahoma City INS office denied knowledge of.

Classes were lightly populated and heavy with anxiety the remainder of the day.

At approximately 1:30 PM, during my final class which was Level I, the door opened without any prior knock and in strode a man named Alfredo Arizola, displaying his INS identification, followed by a uniformed Edmond policeman who courteously and quietly remained just inside the doorway. I asked the INS man if he had seen my boss and he answered affirmatively. Mr. Arizola then continued on to say which department he was from and told us that he was there to inform us that effective November 13 English Language Center would be closed and the students would need to refile with his office for new I-94's because when the students went elsewhere they would need them. At the completion of his statements, which he rapidly repeated, he strode out, followed by the Edmond

police officer. My students were immediately excited, concerned and confused.

FURTHER AFFIANT SAYETH NOT. /s/ Patricia L. Forsythe

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Before me the undersigned, a Notary Public, in and for said County and State, on this 23rd day of November, 1982. [Illegible] Patricia L. Forsythe, and [blank], to me known to be the identical persons who subscribed the foregoing instrument and acknowledge to me that they executed the same as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE the day and year last written above.

/s/ Corrine E. Barnes My commission expires: May 27, 1986

[Compliance Papers: Letter provided by the O.I.C. in Oklahoma City the next day after ELC was closed for not filing the compliance papers] [US Dept. of Justice, INS letterhead]

DAL 214.3/684.P
Nov. 02, 1982

Mr. James Stewart, Director
English Language Center
P.O. Box 1866
Edmond, OK. 73083

Dear Mr. Stewart:

This is in reference to our letter of October 14, 1982 advising you that since you failed to file an answer to our notice of intent to withdraw approval of your school for attendance by nonimmigrant students your school approval was withdrawn.

I have been advised that the materials submitted by you have been located. You are therefore advised that you may continue the operation of your school reissuing I-20s to initial and transfer students until such time as a decision is rendered by the Immigration Judge. The above is valid at your present school location only. Should you change school locations then the burden of proof is upon yourself to submit a new I-17 on behalf of that school.

You will be advised as to when the hearing will be conducted. At that time you may present any evidence or witness to establish the bonafides of your school.

Sincerely,

/s/ James M. Woods
James M. Woods
Officer in Charge

App. 59

[Correspondence relative to the illegal closing. GMA had promised to send fifteen students per term to ELC. Instead, they withdrew all GMA students because, as Lic. Beltran said, "You have problems."]

[ELC letterhead]

November 2, 1982

Lic. Luis Beltran
Fundacion Gran Mariscal de Ayacucho
810 Seventh Ave.
10th Floor
New York, New York 10019

Dear Mr. Beltran,

I am enclosing a letter from Mr. Woods from the Immigration and Naturalization Service in the Oklahoma City office, which acknowledges their error in closing our school yesterday. In reference to "such time as a decision is rendered by the Immigration Judge" was necessary because the officer in charge of the Oklahoma City office is not authorized to take this step. Only William J. Chambers in the district office would have that authority. It simply means that I will get another letter.

Our school has not yet received payment for the terms starting September 20 and October 18. If there is some sort of problem with this please let me know. Otherwise, prompt payment in this matter would be appreciated, for this school has obligations that it needs to meet.

We are looking forward to future service to your organization, but we hope that future students will not be quite so eager to find a way to get somewhere else.

Cordially yours,

/s/ J E Stewart
James E. Stewart
Director

cc: Sr. Nunez
Mrs. Betty Hagad
JES/pb

[ELC letterhead]

January 24, 1983

Mr. Jim Woods
Officer in Charge
Immigration & Naturalization Service
200 N.W. Fourth Street, Room 4423
Oklahoma City, Oklahoma 73102

Dear Mr. Woods:

I suspect that Mr. Traslavina has reported to you that the Special Inquiry Officer ruled that the approval of our school has not been withdrawn. Although the hearing has been continued till March, the business of that hearing has strictly to do with the consideration relevant to the I-17.

To my request that a clear, unqualified statement of approval be sent to all embassies and consulates, Mr. Traslavina stated that the message would need to mention that the school's approval is pending on the outcome of a formal hearing. Again, this places the school's approval and good name upon your office, not upon the officer who legally grants or denies approval. Until your office has made its accusations and until the matter has been officially reopened before the Special Inquiry Officer in March, approval seems to be pending only in the mind of Mr. Traslavina or whoever is directing him. If you send out notice at this time that approval is pending, it will be an untrue allegation and will appear to me that your office has illegally overruled the judge's approval. There is no legal basis for your continuing to publish your or Mr. Traslavina's attitudes as law under CRF 214. As I see it you are accusers, not judges.

At the hearing Mr. Traslavina suggested that there were other irregularities which need answering. We will attempt to

answer your complaints, when you figure out what they are, before the proper tribunal.

Again, as usual, please assist us in clearing the confusion with a clear, true, legal statement. I would appreciate receiving a copy of the telex to send to placement officers in the U.S.A. who are under the false impression that the school is moribund. I also want to determine whether it is clear, true, and legal.

Very truly yours,

/s/ J E Stewart
James E. Stewart
Director

JES/lr

cc: W. J. Chambers, District Director

[Message Format]

INOKC RR AA JASUP .
FM OIC JINS OKLAHOMA CITY OK
TO AMCONSUL MARACAIBO
DJJ-INR
BT
UNCLS
PRIORITY. ENGLISH LANGUAGE PROFICIENCY PROGRAM OF EDMOND, OK. IS AUTHORIZED TO ISSUE I-20'S. SERVICE HAS INSTITUTED PROCEEDINGS OF WITHDRAWAL OF SCHOOL APPROVAL. MATTER TO BE SCHEDULED FOR HEARING BEFORE IMMIGRATION JUDGE IN JAN. OF 83. MEANWHILE SCHOOL IS STILL APPROVED TO ISSUE I_20'S. THIS OFFICE WILL NOTIFY OF RESULTS OF HEARING.

NNNN
0001 09:52:13 12/28/82

App. 63

[Correspondence relative to correct notice to consulates]
[ELC letterhead]

December 29, 1982

Mr. James M. Woods
Office in Charge
U.S. Department of Justice
200 N. W. Fourth Street, Room 4423
Oklahoma City, Oklahoma 73102

Dear Mr. Woods,

According to reports from our contacts abroad, I suspect that your withdrawal of the closing of ELC has missed several embassies and consulates. Please send out a new notice. If a general notice, please send word to Kuwait, Saudi Arabia, Abu Dhabi, Lebanaon, Somalia, Nigeria, Syria, Italy, Switzerland, and Columbia.

Thank you for your cooperation in this matter.

Very truly yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

[ELC letterhead]

December 29, 1982

Mr. Jim Woods
Officer in Charge
U.S. Department of Justice
200 N.W. Fourth Street, Room 4423
Oklahoma City, Oklahoma 73102

Dear Mr. Woods,

I would like to thank you and Mr. Transonvinian *[sic]* for sending additional messages to a few locations, apparently missed by your general announcement to embassies and consulates. In a conversation with Mr. McCain in Mr. Chambers' office, he indicated that it may not be necessary in this case to wait for a judge and formal hearing. As I interpret the section of the law that Mr. Transonvinian *[sic]* gave me, it appears to me that this is the option of the school.

Since the general announcement that our school is still authorized missed in several places, and since the portent of a formal hearing would cause officials to discourage students from traveling half way across the world to attend a school soon to be defunct, please send a clear, unequivical *[sic]* message in a general announcement. The language of your prior announcements have the effect of imminent closing; therefore, the withdrawal of the closing has been to no effect.

Thank you for assisting us in this important matter.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director

cc: Mr. Transonvinian *[sic]*
Mr. Church
Mr. Chambers
Mr. McCain

[ELC letterhead]

February 7, 1983

Mr. Jim Woods
Immigration and Naturalization Service
Federal Building & U.S. Courthouse
Room 4423
200 N.W. 4th Street
Oklahoma City, Oklahoma 73102

Dear Mr. Woods,

Soon after our appearance before the Special Inquiry Officer, I requested a copy of the announcement of the results of that hearing once it was sent to the American Embassies and Consulates. As of this date I have not received any response from your office.

If the copy has been sent in the last day or two, please disregard this request.

Thank you for your cooperation in this important matter.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

[U.S. Dept. of Justice, INS letterhead]

February 9, 1983

Mr. James E. Stewart, Director
English Language Center
P. O. Box 1866
Edmond, OK 73083

Dear Mr. Stewart:

This is in reply to your letters of January 24, and February 7, 1983, requesting that this office advise all consular offices that the Immigration Judge has ruled that your school is approved. This is not so, the Immigration Judge has not ruled on the allegations made by this Service; this is very apparent due to the fact that the hearing has been continued rather than completed.

I should also advise you that due to the change in ownership, prior approval of your school ceased to exist on the date the school ownership changed. Your Form I-17 filed with the Immigration Judge is for recognition of the school under its present ownership.

Should I send a clear, true, legal statement concerning your school's status, I would be bound to advise the consuler *[sic]*offices that your school is not approved but is seeking approval under its new ownership.

Please be assured that once a determination is made as to whether or not your present school should be approved, this office will so advise the consular offices.

Sincerely,

/s/ James M. Woods
James M. Woods
Officer in Charge

[ELC letterhead]

February 10, 1983

Mr. James M. Woods, Officer in Charge
Immigration and Naturalization Service
200 N.W. Fourth Street
Federal Building & U.S. Courthouse, Room 4423
Oklahoma City, Oklahoma 73102

Dear Mr. Woods,

In response to your letter of February 9, I should like to repeat my request. Should you advise anyone that our school "is not approved but is seeking approval" you would be misrepresenting the facts. Ownership and control of both entities abides with me. Consequently, should the Special Inquiry Officer deny my request for the new file number, my control of the approved entity assures the school continued approval. My request for the new file number is out of convenience, not necessity.

This matter weighs heavily with me, for the last communication unjustifiably put the school in a bad light. Your reluctance to state the matter in clear language that reflects the true situation leaves it in that bad light.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

[U.S. Dept. of Justice, INS letterhead] OKC 91/6

February 17, 1983

Mr. James E. Stewart
English Language Center
P. O. Box 1866
Edmond, OK 73083

Dear Mr. Stewart:

This is in reply to your letter of February 10, 1983. For the reasons
stated in my letter of February 7, 1983, your request is denied.

Sincerely,

/s/ James M. Woods
James M. Woods
Officer in Charge

[ELC letterhead]

March 1, 1983

The Honorable George Schultz
Secretary of State
Washington, D.C.

Honorable Mr. Secretary:

At least two consulates are rejecting students with I-20's issued by English Language Center because, as they say, our school is not a part of a university. I refer to Seoul, Korea and Kuwait, both of whom I have requested by letter to alter their practice.

Apparently there is, at these consulates, a basic misunderstanding of some part of C.F.R. 214.3. Since this practice may be followed in other consulates, is it possible for the State Department to send out a general statement of clarification? The discrimination is very injurious to a school which meets the same requirements as any other language school meets.

I am enclosing our letter of certification from the Board of Higher Regents for Oklahoma State Colleges and Universities.

If your office would like additional information, please contact me by phone or mail. Because of a recent move and building program, our telex is temporarily out of service.

Very truly yours,

/s/ J E Stewart
James E. Stewart
Director

JES/pb

Enclosure: Board of Higher Regents Certification

[Administrative Notice to this notice was attached]

[All correspondence, affidavits, and memoranda dated prior to the date of this notice. It was sent to Mr. McCain because he was the only person in the Dallas office who would respond. There was no response to any part of this except the issue of notice. That occurred in 1989//JES]

[ELC letterhead]

March 20, 1983

Mr. Homer McCain
Immigration and Naturalization Service
District Office
1100 Commerce, Room GA21
Dallas, Texas 75242

Dear Mr. McCain:

I am enclosing materials which show part of what our school has endured since July 8, 1982. They will show that I have been answering accusations and reacting to illegal harassment, that the government has nearly killed an institution and destroyed the effects of three years of my labor, that I need an immediate stop to harassment, and that I intend to seek legal remedy.

On July 8, 1982, Mr. Traslavina from the Oklahoma City INS office walked into our office and announced that he had come to shut down the school. While he was waiting for me to finish teaching at Central State University, he visited the

Fire Marshal, the City Planning Office, the City Attorney, and my boss at the university, Dr. Patrick Cassens, Vice President of Academic Affairs. When he conducted this initial raid, he brought with him a typed set of notes with twelve numbered items. All of those twelve items were answered to his satisfaction. There were two of those twelve items numbered thirteen and fourteen scribbled in pen. Items thirteen and fourteen, obviously impromptu discoveries, comprise the main issues which have given the Oklahoma City office a pretext of unrelentless, illegal persecution.

Previous to Mr. Traslavina's visit, Mr. Church of the Oklahoma City INS was overheard to remark on the phone to a CSU professor, "That does it! We will just have to shut that place down." "That" refers to a misunderstanding in connection with the transfer of two Korean girls from ELS to our school, ELC. The girls had told me that they had entered the country on an I-20 from CSU. CSU was written in ink on their I-94's and on their visas; ELS was in pencil on one of the documents. Dr. Paddack had told me that those students preparing for CSU were under his responsibility, and they could choose which language school to attend. I was presumed to be in error because the girls had not reported to ELS in Oklahoma City.

On July 8, I offered to bet Mr. Traslavina $100.00 that he could show no I-20B's from ELS for the two Korean girls. This was after two hours of inane accusations by Mr. Traslavina. He merely smiled. When I asked him why INS and others were out to get us, he said, "You write too many letters."

A few days later, although I had a total of 70 days to comply to fire code regulations, students who wanted to transfer to ELC were denied transfers--even though we had relocated in approved space. I kept Mr. Woods and Mr. Traslavina informed of each change, and I sent the required papers immediately. As you know, those papers were lost in the Dallas office.

After I received Mr. Chambers' letter irrevocably closing the school, I offered to bring the originals and a copy of my sworn statement anywhere that Mr. Woods indicated. Mr. Woods refused to look at them because the papers had not been sent by certified mail. I made the offer to him because Mr. Chambers was unavailable. In spite of Mr. Woods' refusal, I sent the corporation accountant on Monday morning, November 1, 1982, to the INS office. He spread the papers before Mr. Church, but Mr. Church refused to look at them saying, "It's too late." Knowing it to be wrong, destructive, unnecessary, and death to the school, at 1:30 that same day Immigration sent armed officers into the classrooms, ejected

our students, and closed the school, obviously in approved space. I learned later that several days prior to my receiving Mr. Chambers' letter, transfers were already being denied to students who wanted to come to ELC.

As if it were not enough for Mr. Traslavina to destroy the school, he chose to slur my character to my colleagues at the university with intimations of fraud. Mr. Arizola arrived at the university telling people in the Liberal Arts Building that he had a warrant for me. Actually, he had a copy of Mr. Chambers' letter which I had already received, and Mr. Woods well knew of it. The frightening thing to me about all this is that so many of the hurtful acts were done by men who knew those acts were wrong.

The fact that we had moved the school was the pretext for the I-17 review. INS had forced me into that new location. I am sending notes from that hearing. You will notice that the only point in contest was the matter of compliance with the fire code, a matter well known to the INS officers. Under these circumstances, the hearing itself constitutes further harassment. Why else would the hearing be requested?

My daughter, Jami, was in Dr. Rowley's office when a reporter called, Mr. Dan Merriman. From the context of the article which resulted, I have deduced that Mr. Woods had called him. Mr. Woods did not give true statements or he was

misquoted. I am guessing that the student in question is the brother of the proprietor of a pizza house which Mr. Church frequents. I had told the brother that the student needed an I-20 to another school or I would have to report his absence from the school. He was quite angry and arrogant. The student had stopped school [to] work. So far as I know, the student is still working, perhaps on a green card now. The first verbal threat came from Mr. Church.

I have told Mr. Woods and Mr. Traslavina about my reorganization of the corporation. For months they have known that I have a contract for 49% of the stock in the old corporation and the voting privilege on the remaining 51%. They also know that the old corporation was in shakey condition because of old debts and mismanagement. In the I-17 I have requested the government, if they doubt my veracity, [to]contact my attorney, Mr. Kenneth Dewbre. Yet Mr. Traslavina's typewriter is the one used to stir up Mr. Azarmi, a man who threatened to kill me in hopes that I would simply walk away from my interest so he could take over the funds and miss payroll. I have been told that intimidation is the method he used to obtain his former partner's interest. Stock cannot be legally transferred in this manner. Mr. Woods and Mr. Traslavina knew about this--yet Traslavina composed Mr. Azarmi's letter to Mr. Woods in the Oklahoma City INS office.

I know this because the locations mentioned are the consulates I requested to be sent a telex revoking the closing of the school. Notice the identity of the type on the letter to me from Mr. Woods, typed by Mr. Traslavina, dated November 2, 1982. I know that Mr. Azarmi did not write the letter because he cannot write. This is true, not a mere slur. I founded the first remedial English laboratory in the Missouri secondary schools. I would estimate his English skills to be approximately fourth-grade level. He asked me to tutor him, but he is not teachable. His death threat was not signed, but his style showed. The note has more words misspelled than correctly spelled. The most telling fact that the letter was typed inside INS is that the address is incomplete.

Now to those closed markets. I consider it deliberately malicious and beyond the scope of their authority that the INS has failed to notify the embassies in the few cities from which we were receiving students. I have direct knowledge that the revocation telex was not sent to Venezuela and Saudi Arabia. It took me nearly three years to gain the confidence of the Saudi government. That country is totally alienated from us now because an important subject of the king was turned down for a visa because he had an I-20 from our school, and the official who recommended us was embarrassed. Our representative in Venezuela was facing a lawsuit and a possible jail term for

recruiting for a closed school. When he phoned me, I asked Mr. Traslavina to phone the embassy in Venezuela. He said that would be a breach in protocol. His delay cost the school ten students, over $20,000 in desperately needed revenue. I asked the consulate in Maracaibo to call this INS office. "Sorry," the officer said, "but that would be a breach in protocol." Joseph Heller rides again! [Heller, author of Catch 22.]

An additional two months of delay severely damages the school because the old telex keeps students away. I have used up my savings, my credit, and my patience.

Too many papers have been lost for circumstances to be normal. The loss of my sworn statement and documentary support in Dallas was possibly a clerk's error. But Mr. Traslavina could not find those papers for the January 20th hearing, providing pretext for delay. The request for additional material to accompany the I-17 for the March 16th hearing was, apparently sent to the wrong address. Mr. Traslavina said it was sent January 21st. I wonder why it was not returned to him. I wonder if he had also put the wrong return address on the envelope. Other notices from the INS office have had no difficulty reaching ELC. I was told then that the I-17, the prime document under consideration, had been lost. Mr. Azarmi had the only copy of the request at the March 16th hearing. Mr. Traslavina said that he had handed the copy to Mr. Azarmi.

This indicates to me deliberate, harmful acts to continue denying the approval given by the Special Inquiry Officer. That I would possibly not be able to respond impromptu would cause delay. The lost I-17 would have given grounds for continuance. Meantime, that old telex keeps students away.

I have to be very careful with papers that do arrive. The notice of the January 20th hearing stated that it would be held at 8:00 p.m. Luckily, Mr. Woods had given the correct hour on the phone as 8:00 a.m.

Again, those hearings were doomed to a continuance from the start, and it appears that several provisions were made to cause us to lose or to bring about delay. Although I had brought the I-17 file materials several days prior to the first hearing, the delay was occasioned, in part, by Mr. Woods and Mr. Traslavina's having given the request for additional material to Mr. Azarmi. His presence at the hearing had nothing to do with the new I-17. Azarmi and his lawyer ignore the contracts which induced me to invest a great deal of time and $37,000 in cash, $22,000 in 1982 after the agreements were put in writing.

Immigration's threatening the man who helps us in Venezuela caps it. I explained his relation quite some time ago to Mr. Traslavina. The harassment continues. They force our transfer students to wait, after their interview, until the end of

the day before handing them their papers. They slander us to [deny] transfer students directly and by innuendo. They have slandered us directly to registrars. I was not surprised to hear the rumor that I had been sent to prison.

To save some of your time, I will place comments in green ink on enclosed documents, which should convince you that ELC is being harassed by men who are exceeding their authority.

Because Mr. Burkholder is aware of the intensity of my feelings, I am sending him a copy of this letter. Perhaps it will help him understand that the hearings were trivial and they both were deliberately designed for costly delay. I was prepared to answer any reasonable objection. I understand that the second hearing was continued to give my lawyer time to familiarize himself with the case, but Mr. Burkholder wanted to see the certification from Higher Regents. The only copy of the most recent is in the I-17 because it was obtained at the last minute. I'm sure that he realizes the government is causing unnecessary loss of time.

Please try to help us in this. Can you stop these men? Although it is impossible to ascertain the total cost of all this, the listings in the enclosures indicate a minimum loss of revenue of nearly $200,000. INS officers have destroyed, in my opinion, a potentially very good thing for our country. Our

students love this country without indoctrination. From what I've been reading in the news, we need friends. We are also talking about something more important than business, but if you want to talk business, these people bring into our country 100% advantage on the balance of payments. I do not understand the hostile way in which I have been cut off from contact with these people, why my work and mission have been abridged. You are dealing with an American citizen who thinks that the more we know of each other in our various cultures, the more we grow. My work is important for us all.

Further, this letter is to formally advise you that I intend to pursue restitution of my rights, the following of my vocation, and [to recover the] loss of property. I understand the initial step is to file with INS a formal complaint. Mr. Chambers, Mr. Woods, Mr. Traslavina, Mr. Church, and Mr. Arizola are to be named in the proceeding. If you have them, please send me the proper forms for the initial filing for damages, actual and punitive. To whom do I file? The Secretary of State? The Justice Department? The National Director of INS?

In the event that this letter may be used as a formal complaint, please let the record show to the proper-level officer that it is the determination of Twashakarris, Inc., to take formal steps in the restitution of damages of $186,000, or above, and

twenty million dollars as punitive damages. Since I expect the INS to reject this request, I would like a prompt reaction so that I can pursue remedy in the Federal District Court.

In summary, our school needs the following from the District Director:

1. Send a clear, unequivocal message to all markets that the school is approved.

2. A copy of that message to send to student advisors in the USA should be sent to me.

3. Mr. Church, Mr. Traslavina, and Mr. Woods must stop slurring the school and denying transfers.

4. Please direct them to stop calling in our students and former students who have done nothing wrong, merely to shake them up.

5. Please direct them to stop losing papers in order to delay hearings that affect the life of the school. Please direct them to stop wasting my time in responding to trivial complaints, especially when they know the true situation.

6. Please advise me concerning my obtaining remedy for the damage already done.

7. Please direct these men to follow the law they have sworn to uphold.

If you cannot stop their harassment, please let me know, and I will close the school. If this does not properly initiate the plea for remedy, please inform me immediately.

Thank you for your interest in these matters. Until last Thursday's phone call with you, I thought we were totally without help.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director, ELC
President, Twashakarris, Inc.

Enclosures
JES/lr
cc: G. Burkholder

[NOTE: To this date, 12-7-95, there has been no response to this administrative notice./JES]

[Attachment to the Administrative notice to INS]

NARRATIVE OUTLINE OF ELC ACTIVITY WITH INS

November 1, 1982, late afternoon.

Mr. Homer McCain in the District Immigration office in Dallas said that he had called Mr. James Woods in the Oklahoma City Immigration office.

November 2, 1982, 9 A.M.

Mr. McCain said that the papers had been found.

November 2, 1982.

Mr. Transonvinian *[sic]* handed Mr. Stewart a letter bearing Mr. Woods signature indicating "that the materials" had been located. Just prior to that, a secretary in the immigration office told me that Mr. Woods was not in the office that day.

December 12, 1982.

An ELC agent in Maracaibo, Venezuela called saying that the consulate there was not honoring ELC I-20's.

December 13, 1982.

Mr. Stewart called Mr. McCain. Mr. McCain said that it was permissible for ELC to issue I-20's without filing a new I-17 file. Mr. McCain said "Somebody is playing games with you down there." He suggested that Mr. Stewart meet with Mr. Woods.

December 14, 1 P.M.

Mr. Woods agreed to send a new notice to Maracaibo, Caracas and Kuwait indicating that our I-20's were to be honored.

December 24, 1982.

An ELC agent in Maracaibo reported that no I-20's could be honored from ELC in Maracaibo.

December 26, 1982.

Mr. Stewart left two messages for Mr. Woods. They were not returned.

December 27, 1982.

An ELC agent in Maracaibo [illegible] that 10 students had been blocked at the Maracaibo consulate [illegible] to sue that agent.

December 28, 1982, 8:30 A.M.

Mr. Stewart called Mr. [illegible] the secretary in Mr. Chambers' office and was informed [illegible] a meeting. The secretary promised to put [illegible].

December 28, 1982, 8:[illegible]

Mr. Stewart [illegible], Mr. Transonvinia *sic]*[illegible]

December 14. Mr. Tra[illegible] is a breach [illegible].

December 28, [illegible]

Mr. Stewart phoned [illegible] permission to submit the I-17 file wi[illegible]. Mr. McCain said that he would phone the [illegible] office.

December 28, 1982.

Mr. Stewart received [illegible] that ELC I-20's were being refused in [illegible] afternoon, Mr. Stewart received copies of [illegible] telexes suggested the school was to be di[illegible] that a new telex be sent to the consulates in unequivocal language.

December 30, 1982.

Mr. McCain, in a phone conversation with Corinne Barnes, said that the intent of the telex was adequate, but that Immigration does not feel that we are a school that Immigration would want to recommend -- that they feel that we are not elligible *[sic]* to teach foreign students.

[ELC Letterhead]

MEMORANDUM

TO: Jami Stewart

FROM: James E. Stewart

DATE: October 4, 1984

SUBJECT: Lawsuit

The conduct of the three hearings before the Special Inquiry Officer indicated a definite desire of INS to destroy the school. INS officers knew that no message had been sent to correct the illegal closing, yet they delayed resolution. So far as I know only one notice was sent to Venezuela when Daniel was in trouble. OKC officers would not send. The District Office in Dallas sent it, but in language saying approval was subject to a hearing but that ELC could issue I-20's. The language was too threatening for any officer to send any students to us since it appeared that we might be shut down. Actually the office is Special Inquiry Office[r]. I was under the impression that the message went out to all points, but it went only to Maricaibo.

At the first hearing, as well as the others, the I-17 was lost. They had also lost the papers that I filed with Dallas a second time. Mine are the only copies extant. The government moved for a two-month delay.

At the March hearing, the government presented us with demands for specific information, almost all of which had been presented in the I-17, including the ownership question. They had drawn Azarmi in, along with a very intimidated Daniel, who thought they would deport him. He has not worked for us since. They had collaborated with Azarmi only

to confuse the issue of ownership. This caused our attorney to accept the delay. The delays due to lost papers and motions to continue were costing us severely.

At the third hearing, Azarmi not present, there was still no I-17, and no request for additional information. Soon after the Special Inquiry Officer ruled all issue mute *[sic]*[moot], Mr. Woods requested a new I-17, directly in violation of 8 CFR 214.3K:. Commissioner Carmichael in Washington requested an I-17 from everybody who deals with foreign students. A permanent file number has been pending on that for over a year.

Question: Since it is fairly clear that Church, Woods, Translavina *[sic]*, Chambers, McCain, and Flores have acted in concert, would it help our case for us to file a complaint for conspiracy now, or should we wait till later?

I feel that the tape of the hearings may have to be subpoenaed to establish the validity of the closing order from Chamber and the letter from Woods admitting that our papers (the Fire Marshall's approval of facilities) had been found.

[not signed]

[In 1985 English Language Center is omitted from the official list in Mexico, the **ingles eua** {ENGLISH USA}, which was published by the U.S. Embassy, Mexico City]

[Schools listed in **ingles eua:**]

Estado-Institucion
Direccion-Telefono
OKLAHOMA

ELS LANGUAGE CENTER
Intensive English
c/o University of Oklahoma
1666 Cross Center Drive
Norman, OK 73069
Tel: (405) 364-7110

ELS LANGUAGE CENTER
Intensive English
c/o Oklahoma City University
Harris Hall
1915 N.W. 24th Street
Oklahoma City, OK 73106
[no telephone number listed]

OKLAHOMA STATE UNIVERSITY
English Language Institute
Director
Office of International Programs
221 USDA Building North
Stillwater, OK 73106
Tel: (405) 624-6535

PHILLIPS UNIVERSITY
P.O. Box 2000
University Station
Enid, OK 73702-2000
Tel: (405) 237-4433

SPARTAN SCHOOL OF AERONAUTICS
8820 East Pine Street
P.O. Box 51133
Tulsa, OK 74151
Tel: (918) 836-6886

UNIVERSITY OF TULSA
English Institute
Admissions
600 South College Street
Tulsa, OK 74104
Tel: (918) 592-60000
Ext. 2535

[ELC Letterhead]

September 18, 1984

MEMO

To: Jami Stewart
From: James Stewart /s/ JES

August 23, 1984, Abdirizard Mohamoud returned from Abu Dahbi and reported that Nura Abdi Hussein had been denied visa for the following reason that English Language Center "is a little school. You'll be wasting your time."

I called George Lanin at the State Department in Washington D.C. He referred me to Inquiry to Post Department. There I talked with a Mrs. Morgan who agreed to send the inquiry to Abu Dahbi.

August 30, 1984, Ibrahim Ali reported that Nura was also told that the English Language Center did not exist. His interpretation of this was that, so far as the State Department was concerned, it did not exist. The officer suggested that she return to Somalia and try to enter from there. In another phone conversation with George Lanin on August 30, 1984, he explained the nature of the investigation which he had made clear the school's authorization in the spring. It had involved nothing more than a phone call to the central office of INS in Kansas City, Missouri.

August 23, 1984, phone call to Alice Strickler, Washington D.C., Office of School Evaluation. Strickler said that ELC's I-17 had never left Washington and would be processed as soon as possible.

App. 90

MEMO

DATE: February 9, 1984

FROM: Mr. James E. Stewart /s/ JES

TO: Jami Stewart

SUBJECT: Law suit, English Language Center vs. United States Immigration and Naturalization Service and others, May 1984.

FACT: July 8, 1982, Mr. Ralph Traslavina, Oklahoma City Immigration and Naturalization Service (INS) entered the ELC and announced that he had come to shut down the school.

SUPPORT: Affidavit and testimony by Javad Dodgostari. Testimony by John Elliot.

FACT: Traslavina carried with him typed notes indicating his line of inquiry. Inked additions were made on the site. The eventual objections came from the inked, on-site revisions listing violations of the fire code.

SUPPORT: I have the document myself.

FACT: I asked Traslavina why INS was out to get us. He replied, "You write too many letters."

SUPPORT: Witnesses: Javad Dodgastari, John Elliot, and

Patricia Boyd Jazdanian.

FACT: August 20, 1982, District Director of INS (Dallas, Texas, William J. Chambers), requested "documentary evidence setting forth reasons why the approval should not be withdrawn." August 31, 1982, Cover letter to William J. Chambers, copies of fire department approval for facilities in Edmond Public Schools were sent to Chambers in the Dallas Office.

SUPPORT: Copies of the letters, contracts and witnesses to the preparation and mailing of the letters.

FACT: Letter dated October 14, 1982, from Chambers closing the school without appeal.

SUPPORT: The letter itself.

FACT: Although at an approved location, November 1, 1982, 1:30 p.m., Alfredo Arizola in the company of armed policemen informed all classes of ELC that the school was closed and the students would need to refile in the Oklahoma City office for new I-94's. *

SUPPORT: Affidavit from Patricia L. Forsythe, ELC teacher. Witnesses: Javad Dodgastari and others.

FACT: November 2, 1982, 9:00 a.m., Homer McCain, Dallas office of INS said papers had been found.

SUPPORT: Memo and ELC narrative outline of activity with INS, i.e. the phone log.

FACT: November 2, 1982. 10:00 a.m., Mr. Traslavina handed me a letter bearing James Woods' signature indicating that the materials had been found. And that the center continued approved subject to "such time as decision is rendered by an immigration judge."

SUPPORT: The letter itself.

FACT: As a result of one of our agents facing both civil and criminal prosecution in Maracaibo, Venezuela, a telex was sent indicating that our school was authorized to issue I-20's but that "service has instigated proceedings of withdrawal of school approval."

SUPPORT: Copy of Telex dated 12-28-82 0:52:13.

FACT: School officials were called before special inquiry officer Mr. Gary Burkholder in January, 1983, March 1983, and May, 1983. All issues regarding ELC were adjudged moot.

SUPPORT: Secretary's notes in our possession. Tape of hearings at Oklahoma City office of INS. [Note: Woods attempted to re-open hearings illegally.]

FACT: Copy of telex to all embassies and consulates following the May hearing was sent to John Sellers, Attorney for ELC.

SUPPORT: Copy of Telex.

FACT: The Ambassador from Quwait *[sic]* and Jiddah, Saudi Arabia, never received the telex.

SUPPORT: The letters.

FACT: Deliberate refusal to clearly rescind the closing to all embassies and consulates.

SUPPORT: Letters from Woods refusing to send clear, legal, general notice.

FACT: Documents were lost concerning each of the three hearings. Notices were not sent. No factual basis was given for the closing or the hearings.

SUPPORT: Notes on the hearing and the tape.

FACT: March 20, 1983, to satisfy his request, I sent a letter to Homer McCain (INS officer-Dallas) requesting his assistance, giving the basis for my request with extensive documentation. To this date there has been no reply.

*Expansion of the fact portion on page two.

Mr. Dadgostari introduced himself to Mr. Arizola as the Principal of the school. Mr. Arizola explained why he was there--to close the school for being in violation of the Edmond Fire Code. Mr. Dadgostari explained that we were in a new location which was approved and suggested that he discuss the matter with the Director. Mr. Arizola said that he had already checked with the Director (which he had not). He then asked Mr. Dadgostari if he could prove that he was in the country legally. Mr. Dadgostari was required to show his green card.

[ELC letterhead]

MEMO

To: Mr. James E. Stewart
From: Javad Dadgostari, Principal
Subject: INS closing and its aftereffects
Date: March 17, 1983

At 1:30 P.M. on October 22 [Nov. 1], 1982, Officer Arizola, accompanied by two Edmond policemen, entered the school at 215 N. Boulevard to order the students to transfer from our school. I decided to ask for a warrant or some other justification for what was about to happen. I received no explanation except that he, Officer Arizola, had orders from his superiors to close our school.

He proceeded, despite my entreaties that such an armed entry into the classrooms would be horrifying to the students, most of whom were from semi-totalitarian countries.

The following students were driven away from the school the same day or within the next two days:

Name	Level	Nationality
1. Inciarte, Roberto	[This	Venezuelan
2. Monero, Jose	column	"
3. Belloso, Jose	illegible]	"
4. Romero, Iraima		"
5. Valderrama, Alvaro		"
6. Martinez, Kleiber		[illegible]
7. Reyes, Ruben		[illegible]
8. Gimon, David		[illegible]
9. Fernandez, Jose		[illegible]
10. Pena, [illegible]		[illegible]

11. Aguero [illegible]		[illegible]
12. Rodriguez, [illegible]		[illegible]
13. Isturiz, William		[illegible]
14. Chocron, [illegible]		"
15. Aalfaro, Ana Marina		"
16. Real, Jose		"
17. LaCorte, Jeanneth		"
18. Gonzalez, Emiro		"
19. Fonseca, Jesus		"
20. Patino, Victor		"
21. Sanchez, Ledys		"
22. Lee, Hea-Suk		Korean
23. Perez, Benito	2	Venezuelan
24. Quilote, Juan	2	"
25. Abdallah, Manuel	2	"
26. Abdallah, Fernando	2	"
27. Rodriguez, Robinson	2	"
28. Elio, Rosario	5	"
29. Valles, Victor	5	"

This represents a loss of $36,850.00

Respectfully submitted,

/s/ J Dadgostari
Javad Dadgostari
Principal

STUDENTS FOR WHOM I-20's WERE ISSUED BUT NEVER ARRIVED AT ELC

OCTOBER 18, 1982 TERM	COUNTRY
ALVAREZ, JUAN	VENEZUELA
GUEBELI, PETRA	SWITZERLAND
ISMAIL, MOHAMMED	PALESTINE
MEDINA, RAIZA	VENEZUELA
MUELLER, GABRIELLE	SWITZERLAND
NAPPO, FULVIO	VENEZUELA
RICELY, ANNEMARIE	SWITZERLAND
SANCHEZ, FRANCISCO	VENEZUELA
STEINER, ROSEMARIE	SWITZERLAND

TOTAL: 9 STUDENTS

NOVEMBER 15, 1982	
COLEMENARES, LUIS *GMA	VENEZUELA
GARCIA, EDEN	VENEZUELA
GARCIA, JESUS	VENEZUELA
HAJEER, ABEL	JORDAN
PIRELA, BENEDICTO	VENEZUELA
MONTERO, FRANKLIN	VENEZUELA
CASTRO, ELBA	VENEZUELA
DARDASHTI, HOSSEIN	IRAN

TOTAL: 8 STUDENTS

DECEMBER 13, 1982	
ABU-DEYYEH, NEDAL	KUWAIT
ABU-HATAB	EGYPT
AL-KOUDARI, SAEED	SAUDI ARABIA
ABU-RAJA, KAMAL	JORDAN

AWADAH, MAHMMAD	JORDAN
GHANIM, SALEH	JORDAN
MFHRABUNI, JAMELEH	IRAN
MOHAMMAD, ZAID	SYRIA
SALEH, MUSTAFA	JORDAN
SULEIMAN, AMIN	JORDAN
SULEIMAN, IBRAHIM	JORDAN

TOTAL: 11 STUDENTS

JANUARY 10, 1983

FREITES, ALMIRA	[ILLEGIBLE]
GAMBOA, LUIS	[ILLEGIBLE]
HERNANDEZ, FERNA[ILLEGIBLE.....]	
JACOME, J[ILLEGIBLE]	[ILLEGIBLE]
JA[ILLEGIBLE]	[ILLEGIBLE]
PERICH, H[ILLEGIBLE]	[ILLEGIBLE]
RAMIREZ, GRAC[ILLEGIBLE]	[ILLEGIBLE]
RODRIGUEZ, JORGE	[ILLEGIBLE]
SOLTANI, ROYA	[ILLEGIBLE]
SWADE, ABDALLAH	[ILLEGIBLE]
SWADE, EMAD	[ILLEGIBLE]
SURUMAY, QUEILA	[ILLEGIBLE]
TAFESH, MOHAMAD	[ILLEGIBLE]
TORRES, JOSE	[ILLEGIBLE]

TOTAL:14 STUDENTS

One month later the following students chose to use the dismissal and sixty-day vacation granted them by Immigration during the time the Oklahoma City office of I.N.S. was illegally transferring students from our school, without those students having I-20's to other schools.

[The proof copy of the telex which was never sent.]
[Message Format]

INOKC RR AA INS[2 letters illegible] .
FM OIC JINS OKLAHOMA CITY
TO I&NS WASHINGTON DC/DEPT OF STATE
DJJ-INR
BT
UNCLS
REF: ENGLISH PROFICIENCY PROGRAM
EDMOND OKLAHOMA
DAL 214.3/684-P

ON MAY 17, 1983 THE IMMIGRATION JUDGE TERMINATED PROCEEDINGS INITIATED AGAINST THE ABOVE NAMED SCHOOL. THE SCHOOL IS CURRENTLY AUTHORIZED TO ISSUE FORMS I-20 AND TO ACCEPT NONIMMIGRANT STUDENTS. PLEASE NOTIFY ALL AMERICAN CONSULATES.
THANK YOU.

NNNN
[2 Numbers illegible]09 15:29:48 05/17/83

App. 100

[Embassy of the U.S.A., Kuwait, Kuwait letterhead]

April 3, 1983

Mr. James E. Stewart, Director
English Language Center
P.O. Box 1866
Edmond, Oklahoma 73083-1866

Dear Mr. Stewart:

I have received your letter of March 1 inquiring why Kuwait applicants for F-1 visas to attend language classes at your center are being turned down by consular section. Your letter states that you have no knowledge of any administrative decision barring foreign students from attending your center.

On October 23, 1982 the Embassy received official instructions from the Department of State which stated that the US Immigration Service has notified the Department that "school approval for the English Language Program of Edmond, Oklahoma has been withdrawn. Form I-20 for this school should not repeat not be honored for visa issuance."

I believe the above message adequately explains why students planning to attend your language school are unable to obtain a nonimmigrant visa from our consular section. Should you wish to pursue this matter, you should review it with the US Immigration and Naturalization Service.

Sincerely yours

/s/ Francois M. Dickman
Francois M. Dickman
Ambassador of the United States
of America

App. 101

[Embassy of the U.S.A., Cairo, Egypt letterhead]

July 19, 1983

James E. Stewart
English Language Center
P.O. Box 1866
Edmond, Oklahoma

Dear Mr. Stewart,

I am sorry to inform you that we did not receive the May 1983 telex concerning the reopening of your school. However, we have received the October 1982 cable (State 298095) which announced the withdrawal of approval for your English Language Program. I hope that this information will be of some assistance.

Sincerely,

/s/ Preston F Zoller
Preston F. Zoller
Vice Consul

App. 102

[Embassy of the U.S.A., Jidda, Saudi Arabia letterhead]

August 7, 1983

Mr. James E. Stewart
English Language Center
P.O. Box 1866
Edmond, Oklahoma 73083-1866

Dear Mr. Stewart:

Thank you for your letter of June 17, 1983 on the topic of the English Language Center's status with INS. The Ambassador has asked me to reply to your inquiry.

A careful search of our file reveals no cable or telex traffic changing the status of ELC I-20s. At present, ELC is one of three organizations whose I-20 forms are not considered valid for the granting of student visas.

You might wish to contact both INS and the Department of State to determine whether I-20s from ELC are to be honored. We, in turn, will call the attention of the department to your inquiry to us.

If we can be of additional assistance, please do not hesitate to contact the Embassy.

Sincerely,

/s/ David J Rabadan
David J. Rabadan
U.S. Vice Consul

DJR/fj

[ELC letterhead]

October 4, 1983

Mr. Andrew J. Carmichael
Associate Commissioner, Examinations
425 Eye Street, N. W.
Washington, D. C.

Dear Mr. Carmichael,

I have just been informed by our principal, Mr. Javad Dadgostari, that the Oklahoma City office of Immigration and Naturalization Service is prejudiced against our application to continue as an authorized school. Mr. Ralph Traslavina, an official in that office, declared that Washington would return the I-17 to him for processing. In the course of the conversation he drew his index finger across his throat twice and stated, "We will cut you off." Mr. Traslavina is one of the officials who was involved in illegally closing the school October 23, 1982. Apparently this action is intended to finish us off.

If it is your process to return the I-17 to the Oklahoma City Office of I. N. S., you will be placing it in hostile hands. These people have been notified in a Federal Hearing of record that we intend to pursue damages. They have been named in the initial petition which I filed with the Dallas office. They will be named in the amended petition and in our petition in Federal District Court. I suspect that whatever attorney that I retain will consider your handing the examination over to these men participation in a concerted effort of conspiracy against the school. If I continue to represent myself, I will have to consider the same action. I also want notification in advance, for I intend to file and injunction in Federal court to prevent this action.

As director of the school and its owner by purchase, I want these incursions and the violation of my Constitutional rights to stop. Please handle this matter outside the Oklahoma City office. I am sorry to present such a messy problem to you, but we did nothing to bring about this state of affairs. Because of I.N.S. officials being in the wrong we have lost nearly all of our students, all faculty but one, and have converted my home into an office and school. At least our student-faculty ratio cannot be improved. It is 1 to 1.

There is one other matter. In my letter of 9-29-83 I made a request that was unclear. We want a new number issued to Twashakarris, Inc. d.b.a. notice of approval sent to all embassies and consulates.

Very truly yours,

/s/ J E Stewart
James E. Stewart
Director

File No. DAL 214.3/ 684-P

[NOTE: Mr. Carmichael sent the I-17 to Mr. Jim Burns in the Dallas regional office. Mr. Burns lost it and did not recover it for several months.]

[ELC letterhead]

December 12, 1983

Mr. Andrew J. Carmichael
Associate Commissioner, Examinations
425 Eye
Washington, D.C.

Dear Mr. Carmichael:

December 9, 1983, I attempted to phone you but was unsuccessful. I am writing because I need information in order to make some decisions.

Please let me know by letter or phone whether English Language Center's I-17 is being processed in the Oklahoma City office of I.N.S., whether there is some problem with it, and whether there is a problem with getting a new file number for Twashakarris, Inc.

Because of what I outlined in my letters of 9-29-83 and 10-4-83 our situation is unusual. To begin to overcome the effects of the destructive acts of the Oklahoma City and Dallas offices, due to difficulties in getting clear word to consulates, we need a new number with clear notice sent to all embassies and consulates.

You can imagine the problems that have presented themselves in recruiting when some offices have been notified that the school is approved and others have not.

I hope you can assist us in this matter.

Very truly yours,

[file copy not signed]
James E. Stewart
Director

[There was no reply or response to this supplication]

[ELC letterhead]

January 3, 1984

Mrs. Yolanda Sanchez
425 I Street N. W.
Sixth Floor, Rm. 6244
Washington, D. C. 20536

Dear Mrs. Sanchez,

In compliance with your request on the phone I am sending a copy of my second letter to Mr. Carmichael and some other documents. At the moment I cannot locate my cover letter to the I-17, but its contents are summarized here and in the October 4 letter.

The file number DAL 214.3/684.3P *[sic]* is the only asset which English Proficiency Program presently has. I have purchased a judgment from Hillcrest Properties,Ltd., and now control all of the school's former property. The name of the school is the property of Twashakarris, Inc., and it is my intention that that corporation continue to operate the school. We are presently teaching in my home and intend to continue using private dwellings until the number of our students becomes large enough to warrant using a building, already approved, which I have arranged to lease. As soon as our activity and relation to Immigration and Naturalization Service stabilize, I intend to construct a new building near Central State University in Edmond.

I have issued a few I-20's for 1984, but, due to the uncertainty of our situation, I have stopped all overt activity to recruit new students. Too may arrangements have crumbled due to the closing notice which was sent and never completely cancelled. There are still too many consulates which have not been notified that our approval stands. As I told you on the

phone, I intend to file an amendment to our claim against INS for damages and for an injunction to prevent further persecution by the officers in Oklahoma City and Dallas. I speak as the attorney for the school.

Please take our request for the assignment of a new file number for the new entity, Twashakarris, Inc., to an officer who can help us. Our teachers and staff would like to return to work. If you cannot help us, please tell me who can. I can be reached at 405-341-7548 or 341-2980, Ex. 617.

Thank you for taking an interest in our situation.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director

[p.s.]
Mrs. Sanchez,

These paper together tell the story of the school. The gathering includes the papers (i.e., copies) that were lost before the school was closed November 1, 1982. Please note the letter from Mr. Woods dated November 2, 1982. The letter to Mr. McCain summarizes our situation. After the third hearing before Special Inquiry Officer Gary Burkholder, Dallas, in which all objections to our approval were ruled moot, notice of our approval was not sent to all consulates, despite the fact that our attorney (no longer retained) Jon Sellers was supplied a copy of a tellex *[sic]*. I have letters from a few embassies indicating that no notice was received.

/s/ JES
J. E. Stewart

[NOTE: There was no response to this request/JES]

[ELC letterhead] March 14, 1984

SPECIAL INQUIRY OFFICER
MR. GARY BURKHOLDER
Immigration and Naturalization Service
1100 Commerce Street Room 101
Dallas, Texas 75242

Dear Mr. Burkholder,

I have requested from the O.I.C. of Immigration and Naturalization Service in Oklahoma City a copy of the tape which contains the proceedings of a set of three hearings concerning the English Language Center in 1983. The hearings were held in January, March, and were concluded May 17. I presume the tape to be in our file in the Oklahoma City office. I will need your written permission to secure or make a copy of that tape. Please advise the Oklahoma City office and send me a copy.

In case you are concerned about communication with me directly, so far as any future litigation between ELC and the government, either I or my daughter Jami will handle our legal affairs. Mr. Sellers no longer represents us.

It may interest you to know that I learned from an official in the State Department today that the order of October 29, 1982, closing our school, was not cancelled until February, 1984! I sent the results of your decision to the Dept. of State not the Oklahoma City nor Dallas office.

I would appreciate your giving this your prompt attention because I intend to use the tape in Federal District Court in a damage suit.

Very truly yours

/s/ J E Stewart
akw/JES James E. Stewart

[Note: There was no response to this request//JES]

[ELC letterhead]

July 22, 1988

Mr. Ronald Chandler
District Director
Immigration and Naturalization Service
6121 Federal Bldg.
1100 Commerce
Dallas, Texas 75242

Dear Mr. Chandler,

I have just received a letter from Mr. Kong, the American Cousul *[sic]* in Kuala Lumpur, a copy of which I am enclosing.

As a response to my two letters to you telling you about Embassies having an incorrect impression of our status (the details are in the letter of May 6). Ms. Bell told me on the phone that your office would send notice to Embassies concerning our status. Since I have not seen a copy of the notice and do not know the date that it was sent, I do not know whether the matter has been resolved.

I need a copy of the message.

A similar problem occurred in the past. A message was to have been sent at the conclusion of the hearings before the Special Inquiry Officer. I was sent a copy. Much later I discovered, quite by accident, that nothing cleared through the Department of State.

The process of notifying Consular officers then involved the District Office sending the message to the Communications center in Kansas City. That center transmitted to the Department of State. The Department of State sent the message

to overseas posts. Despite my begging INS officials to retransmit the message, nothing was done.

Would you please send a copy of the message and notice that you have checked with the center in Kansas City and with the Department of State as to what was actually transmitted. Please give dates. I have already written to several Embassies, but nothing has yet been sent to me that indicates that they have heard from you. Apparently the pro-forma concellation *[sic]* of our old file number, as I suspected, is being applied contrary to the expressed wishes of officials in your district.

You can well imagine the cost of this confusion to English Language Center.

Your prompt attention to this matter is very necessary and seriously affects the life of this school.

Sincerely yours,

/s/ J E Stewart
James E. Stewart
Director

[ELC letterhead]

February 3, 1989

Visa Consular Officer
American Embassy

Kuala Lumpur, Malaysia

Dear Sir,

It has come to my attention that your office has turned down a student bearing our I-20AB because the school is closed.

The school is not closed, and its status stands approved. You shold *[sic]* have received a telex from the Dallas District Office to that effect.

I regret that I cannot give you the student's name. The friend who phoned our office did not give it or leave his number. I have written the Oklahoma City Office of Immigration and Naturalization Service and requested Mr. Walsh to confirm what I have said.

Please notify me as soon as you receive the communication from the Dallas District Office.

Thank you.

Cordially yours,

[file copy not signed]
James E. Stewart
Director

[U.S. Department of Justice, INS, Dallas TX office letterhead]

March March 15, 1989 *[sic]* OKC 214F0684.000

Mr. James E. Stewart
Director
English Language Center
P.O. Box 1866
Edmond, Oklahoma 73083-1866

Dear Mr. Stewart:

Reference is made to your letter dated February 3, 1989. Please be advised that a memorandum was sent to the American Embassy in Kuala Lumpur, Malaysia this date reassuring them that the English Language Center is opened and in operation. They were given your school number and also the date the school was approved for attendance by nonimmigrant students.

Thank you for your patience.

Sincerely,

/s/ [illegible]
Ronald C. Chandler
District Director

App. 113

[US DISTRICT COURT DOCKET, DC-111(Rev 9/8[illegible]]
[Yr 84, Case Number 2581, Date 10/19/84, Mag. No. 8707]

PLAINTIFFS	DEFENDANTS
(1) TWASHAKARRIS	(1) IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES OF AMERICA and certain officers of Immigration and Naturalization Service (2) WOODS, JAMES M., District Director, Dallas (3) TRANSLAVINA *[sic]*, RALPH, Supervisory Examiner, San Antonio (4) CHURCH, ROBERT, Immigration Official, Oklahoma City (5) CHAMBERS, WILLIAM J., District Director, Retired, Dallas, Texas (6) ARIZOLA, ALFREDO, U.S. Marshal, Okla. City, OK

CAUSE

28 USC 1345, et seq: Violation of Constitutional rights and violation of Federal-Torts Claims Act

PLAINTIFF	**Attorneys**	DEFENDANT
~~James E. Stewart, Pro Se~~ ~~President, Twashakarris, Inc.~~ ~~P.O. Box 1866~~ ~~418 East 2nd St.~~ ~~Edmond, OK 73083~~ ~~405/341-7548~~ ~~348-7602~~		William S. Price, USA Roger Griffith, AUSA 4434 US Courthouse Okla. City, OK 73102 405-231-5281 (1)(2)(3)(4)(5)(6)

[continued]

Grover Miskovsky
5801 North Broadway Extension
Suite 101
Oklahoma City, OK 73118
405/848-5455

[Statistical Cards Info:

Card	Date Mailed
JS-5	10-31-84
JS-6	JAN 21 1985

10-19-84 1 COMPLAINT
10-19-84 2 PRAECIPES (8) for & issd 8 summs
11-09-84 3 ORDER grtg dfts ext of time to 12-18-84 to file their ans or otherwise plead (EUBANKS) ps
11-8-84 4 MOTION For Addl Time to Plead or Answer by dfts-w/s
11-23-84 RETURN Of Serv re Summ:
5 EXECUTED on Mr. Robert Church 11-23-84 by cert mail, (served N. Hand (60)
RETURN Of Serv re Summ:
6 EXECUTED on Mr. Alfredo Arizola 11-02-84 by cert mail, Michael Gaines (60)
RETURN Of Serv re Summ:
7 EXECUTED on U.S. Attorney 11-15-84, by Attorney for plf. (60)days)
RETURN Of Serv re Summ:
8 EXECUTED on Mr. Ed Nelson on 10-25-84 by Cert Mail, (served J. Garrett (60)
RETURN Of Serv re Summ:
9 EXECUTED on Honorable William French Smith by Cert Mail, 10-29-84 (60)
RETURN Of Serv re Summ:
10 EXECUTED on Mr. William J. Chambers on 10-24-84 by cert mail served J. Lashley. (60 days)
RETURN Of Serv re Summ:
11 EXECUTED on Mr. James M. Woods on 10-24-84 Cert mail, J. Lashley (60)
RETURN Of Serv re Summ:
12 EXECUTED on Mr. Ralph Translavina *[sic]* on 10-24-84 by cert mail, served (sign illegible), acknwldgmt recpt 10-26-84. (60 days)
12-14-84 13 MOTION For More Def Stmt by dfts-w/s
12-18-84 14 MOTION For Addl Time To Ans Req For Admissions by dfts-w/s

12-20-84	15	ORDER: Mtn of the dfts, an ext of time is grtd up to & including the time an ans is due. (EUBANKS) ps
01-07-85	16	RESPONSES To (1) Mtn To Make Certain, II) Mtn To Ext Time To Resp To Req For Admission, III) Mtn For Judg Due To Dflt Of Defense by plf-n/s
01-10-85	17	ORDER Of Dismissal; This case & all causes of action to be fld are sua sponte dism. (EUBANKS) (MICRO-JANUARY'85)ar
03-11-85	18	BRIEF in Supp of Mtns to Amend & for Relief fm Judg, by plfs -w/s
03-11-85	19	MOTION to Amend Compl & Mtn for Relief fm Judg, by plf-w/s
03-22-85	20	MOTION for Addl Time to Resp to Mtn to Amend & Mtn for Relief fm Judg, by dfts-w/s
04-05-85	21	DEFENDANTS' Resp to Mtn to Amend & Mtn for Relief fm Judg -w/s
04-18-85	22	ORDER: mtn to amend & mtn for relief fm judg, by plfs, denied for reasons & upon grounds stated in dft's resp. (EUBANKS) ar
06-14-85	23	NOTICE of Appeal by plfs fm final decision & order ent 4-18-85 -w/s RECEIVED $70 filing & dktg fees on Appeal. Receipt # 43848
06-18-85	24	CLERK's ltr re serv of Notice of Appeal, w/cpy ltr, Notice & dkt sheet to cnsl & CCA -psh
03-26-85	25	ORDER grtg plf ext to 4-25-85 t file resp to mtn to amend and mtn for relief fm judge (EUBANKS)ar
06-25-85	26	CLERK'S ltr transm Record on Appeal to CCA (1 vol), w/cpy ltr & Index to cnsl -psh
04-9-86	27	CCA'S cert cpy of ord & judg (affirmed) (Moore, Anderson & Tacha) -sa
8-14-86		Received orig. Appeal record from CCofA

CIV - 87 - 362 T

[illegible]-19-87 1 COMPLAINT
[illegible]-19-87 2 PRAECIPE for & issd 7 summs
04-10-87 RETURN of serv re summs
3 EXECUTED on James M. Woods, cert mail, 2-24-87 (sign Cheyl McCall) 60 days
4 EXECUTED on Wm J. Chambers, cert mail, 2-24-87 (sign Cheyl McCall) 60 days
5 EXECUTED on Robert Church, cert mail, 2-23-87 (sign P. Adams) 60 days
6 EXECUTED on Alfred Arizola, cert mail,(Cynthia Breane) 60 days
7 EXECUTED on Edwin Meese, cert mail (sign Betty Savage) 60 days
8 EXECUTED on Alan C. Nelson, cert mail (sign J. Garrett) 60 days
9 EXECUTED on Ralph Translavina *[sic]*, cert mail (sign Inlegible *[sic]*) 60 days
10 EXECUTED on United States, service agent US.Attny, s/a Kay Goodloe, 60 days
04-20-87 11 MOTION for protective order & brf in supp by dfts-w/s
04-20-87 12 MOTION to dism & brf in supp thereof-by dfts -w/s
05-29-87 13 MOTION for Permission to Resp Out of Time, by plfs -w/s
06-02-87 14 ORDER Grtg plf permission to resp out of time to dfts' Mtn to Dism or Mtn for Protective Order & is due by 6-29-87 (THOMPSON) bmc
06-29-87 15 REPLY to Dfts' Mtn to Dism & Brf in Supp, by plfs -w/s
06-29-87 16 MOTION to Amend Compl, by plfs -w/s
06-29-87 17 MOTION to Compel Disc, by plfs -w/s
07-14-87 18 RESPONSE to Plfs' Mtn to Compel, by dfts -w/s
07-16-87 19 MOTION of USA to Substitute Cnsl Robert A.

Bradford to replace Roger Griffith as cnsl

07-19-87 20 ORDER that plf's Mtn to Compel Disc is denied; dfts' Mtn for Protective Order is grtd to the extent noted; however, dfts are to resp to any req pertaining to issue of immunity w/i 10 days; all other disc is stayed pndg resolution of the immunity issue (THOMPSON) bm

07-20-87 21 ORDER that Robert A. Bradford be substituted as dfts' cnsl (THOMPSON) bm

07-20-87 22 MOTION for Lv to File Resp, by dfts -w/s

07-21-87 23 ENTER ORDER dfts' mtn grtd & dir t file a reply w/i 5 days (THOMPSON) ih

07-23-87 24 DEFENDANTS' Reply to Plfs' Resp to Dfts' Mtn to Dism -w/s

07-24-87 25 AMENDED Compl, by plf -w/s

08-03-87 26 MOTION to Dism Plrs' Amend Compl or, in Alter, Mtn for SJ & Brf in Supp, by dfts Woods, Translavina *[sic]*, Arrizola *[sic]* & Chambers -w/s

08-03-87 27 MOTION to Dism Plfs' Amend Compl or, in Alter, Mtn for SJ & Brf inSupp, by dft USA -w/s

08-07-87 28 SUPPLEMENT to Mtn to Dism Plfs' Amend Compl or, in Alter, Mtn for SJ & Brf, by dfts Woods, Translavina *[sic]*, Arrizola *[sic]* & Chambers -w/s

09-03-87 29 PLAINTIFFS' Reply To Dft's Mtn To Dism Plf's Amend Compl or in Altern, Mtn For SJ -w/s

10-09-87 30 ORDER that because of its inadequacies the amend compl is dism; dfts' mtns are therefore moot; plfs grtd 10 days to amend their pldg & clarify which theories of recoveries or clms are asserted agnst which dfts; dfts may then, if appropriate, reurge their mtns (THOMPSON) ih

10-19-87 31 MOTION for Enlarg of Time to File Amend Compl, by plfs -w/s

10-20-87 32 ORDER grtg plf to 10-29-87 to file its amend compl (THOMPSON) ih

10-29-87 33 AMENDED Compl, by plfs -w/s

01-20-88 34 DEFENDANTS' Mtn to File Resp Pldg -w/s

01-21-88 35 ORDER grtg dfts to 2-1-88 to file resp pldg(THOMPSON)ih

02-01-88 36 MOTION to Dism Plfs' 2nd Amend Compl or, in Alter, Mtn for SJ & BRF in Supp, by dfts Wood, Translavina *[sic]*, Arrizola *[sic]* & Chambers -w/s

02-01-88 37 DEFENDANTS' Mtn to Strike & BRF in Supp -w/s

02-01-88 38 MOTION to Dism Plfs' 2nd Amend Compl or, in Alter, Mtn for SJ & BRF in Supp, by dft USA -w/s

03-09-88 39 ORDER dismissing dfts United States of America, James M. Wood, Ralph Transalvina, Alfredo Arrizola *[sic]* & William J. Chambers & SJ entered in their favor (THOMPSON) (MICRO MARCH '88)

03-09-88 40 MOTION To Resp out of Time by Plfs w/s

03-11-88 41 MOTION For Relief From Judg by Plfs w/s

3-15-88 42 ORDER plfs' to rspnd to dfts' Mtns Dism by 3-26-88 (THOMPSON) ih

3-15-88 43 ORDER Plf's Mtn for Relief fm Jdgmnt grtd; plfs' failure to rspnd was due to excuseable neglet *[sic]* on pt of plfs' atty; mtn grtd under auth of FRCivP 60(b) (1) (THOMPSON) (MICRO-MAR'88) ih

3-17-88 44 DEFENDANTS USA, Woods, Translavina *[sic]* Arrizola *[sic]* & Chambers Join Rspns to plfs' Mtn for Relief fm Jdgmnt -w/s

03-25-88 45 PLAINTIFFS' Reply to Dfts' Mtn to Strike & Brf in Supp -w/s

03-25-88 46 REPLY to Dfts' Mtn to Dism Plfs' Amend Compl or in Alter Mtn for SJ, by plfs -w/s

07-28-88 47 ORDER directing ptys to suppl their brfs as direct in this ord w/in 20 days; individual dfts' mtn is denied w/respect to their defen of absolute immunity & a ruling is deferred w/respect to their statute of limitations & qualified immunity defenses; U.S. mtn is grtd w/resp to plf's clms that are precluded by 28 U.S.C. §2680(a) & (h); a ruling on it is deferred; Ct will defer ruling on the individual defts' qualified imunity *[sic]* defense until it has determined whether plfs' clms are barred by statute of limitations mtns to dism or for SJ, dfts have filed a mtn req that plfs' damages clm in amt of $367,120.00 be strkn because it exceeds sum of $186,000.00 which was req fm the Immigration & Naturalization Serv in Plfs' Admin clm; mtn is denied; (THOMPSON) ih

08-17-88 48 DEFENDANT U.S.s' Suppl Brf w/s

08-17-88 49 BRIEF to Suppl Plfs' Brf Filed W/Plfs' Reply to Dfts Mtn to Dsm Plfs Amend Compl or in the Altern Mtn for SJ w/s

08-17-88 50 SUPPLEMENTAL Brf Of Dfts' Woods, Translavina *[sic]*, Arizola, & Chambers w/s

01-30-89 51 ORDER plfs §1983 clms against the United States & against indiv dfts are dism w/prej & plfs clms against dfts that are premised on subsequent conduct are not dism THOMPSON) (MICRO-JANUARY '89) (amr)

02-15-89 -- STATUS/SCHEDULING DKT before Judge Thompson on 3-1-89 @ 10:20 a.m.

02-17-89 52 DEFENDANTS Mtn for Sanctions & Dism -w/s (amr)

02-21-89 53 ENTER Ord: cs is stricken from the status conf docket of 3-1-89 (THOMPSON) amr

03-29-89 54 NOTICE Of Appeal To The US Tenth Circ Ct of Appeals Fm An Ord Of The D.C. For The WD of OK fm ord ent 1-30-89-w/s

03-30-89 55 CLERK'S ltr re serv of Notice of Appeal, w/cpy ltr, notice & dkt sheet as prelim record to CCA & cnsl -sa

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OFFICE OF THE SECRETARY OF STATE

STATE OF OKLAHOMA

CERTIFICATE

I, the undersigned Secretary of State of the State of Oklahoma, do hereby certify:

That I am by the laws of said State the custodian of the records of the State of Oklahoma relating to the right of corporations to transact business in this State, and am the proper officer to execute this certificate.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED, was granted a charter on the 12th day of July, 1982, a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED, was suspended by the Secretary of the State on the 13th day of February, 1984, upon order of the Oklahoma Tax Commission for failure to comply with the requirements of the Oklahoma Tax Act.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED was reinstated by the Secretary of State on the 17th day of April, 1984, upon order of the Oklahoma Tax Commission.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED was suspended by the Secretary of State on the 19th day of February, 1985, upon order of the Oklahoma Tax Commission for failure to comply with the requirements of the Oklahoma Tax Commission.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED was reinstated by the Secretary of State on the 23rd day of January, 1990, upon order of the Oklahoma Tax Commission.

I FURTHER CERTIFY that TWASHAKARRIS, INCORPORATED has paid the fees due this office and is a corporation in good standing, according to our records to the date of this certificate.

In testimony whereof, I have hereunto set myhand and affixed the Great Seal of the State of Oklahoma at the City of Oklahoma City this 29th day of April, 1991.

/s/ John Kennedy
Secretary of State

[witnessed] *By* [Illegible] Jones

The Great Seal of the
State of Oklahoma

[68 § 1212/REVENUE AND TAXATION/FRANCHISE TAX CODE]

Penalties-Uniform procedure-Operation without license-Suspension and forfeiture

(a) If the report herein required and the tax levied is not filed and paid within the time provided under subsection (c) of Section 1208 of this title, the Tax Commission shall levy and collect a penalty for such delinquency in the amount of ten percent (10%) of the tax due. Such penalty shall be collected and apportioned in the same manner as is the tax itself, and the Tax Commission may enter an order directing the suspension of the charter or other instrument of organization, under which the corporation, association or organization may be organized, and the forfeiture of all corporate or other rights inuring thereunder. However, no such order of the Tax Commission shall be issued nor effective as to any corporation, association or organization the charter or certificate of authority of which is issued by the State Banking Board or State Banking Commissioner rather than the Secretary of State and the Tax Commission shall only notify the registered agents or managing officer of the corporation, association, or organization and shall notify the State Banking Board or State Banking Commissioner of the amount of unpaid tax. The Commissioner shall require the payment of such tax, plus interest and penalty, if any, within a reasonable time.

(b) Any person who attempts or purports to exercise any of the rights, privileges or powers of any such domestic corporation shall have been canceled, forfeited, or expired, shall be guilty of a misdemeanor.

(c) Each trustee, director or officer of any such corporation, association or organization, whose right to do business within this state shall be so forfeited, shall, as to any and all debts of

such corporation, association or organization, which may be created or incurred with his knowledge, approval and consent, within this state after such forfeiture and before the reinstatement of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such trustees, directors, and officers of such corporation, association or organization were partners. Any corporation, association or organization whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this state, except in a suit to forfeit the charter of such corporation, association or organization. In any suit against such corporation, association or organization on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, association or organization unless its right to do business in this state shall be reinstated as provided herein. Every contract entered into by or in behalf of such corporation, association or organization, after such forfeiture as provided herein, is hereby declared to be voidable.

(d) Notice of such suspension and forfeiture shall be forwarded by certified mail, return receipt requested, to the last-known address of the registered agent or managing officer of each corporation, association or organization, and the Tax Commission may cause notice of such suspension and forfeiture to be published in a newspaper of general circulation in the county in which the general business office of each such corporation, association or organization is located in this state.

(e) The Tax Commission, shall immediately upon entering an order suspending and forfeiting any such charter or other instrument of organization, transmit the name of each such corporation, association or organization named therein to the Secretary of State or the county clerk of the county in which the instrument under which it may be organized is filed, and the Secretary of State or county clerk, as the case may be, shall

immediately record the same and such record shall constitute notice to the public. The suspension and forfeiture herein provided for shall become effective immediately upon such record being made and the certificate of theSecretary of State or the county clerk shall be prima facie evidence of such suspension and forfeiture.

(f) After the issuance of such order of such suspension and forfeiture by the Tax Commission, the charter or other instrument of organization may only be revived and reinstated upon the payment of the accrued fees and penalties and a reinstatement fee in the amount of Fifteen Dollars ($15.00), and a showing by the corporation, association or organization of a full compliance with the laws of this state. Such payment of accrued fees and penalties must be made prior to the expiration of the time provided in such charter or other instrument of organization for the life of such corporation, association or organization.

Laws 1963, c. 366, § 2, emerg. eff. June 18, 1963. Renumbered from § 12-1212 b Laws 1965, c. 215, § 2. Laws 1985, c. 182, § 8, emerg. eff. June 20, 1985, c. 342, § 12, emerg. eff. June 15, 1991.

REQUEST FOR ADMISSIONS

Part I

1. Does the Immigration and Naturalization Service (hereinafter designated as the Service) admit that it sent Mr. Ralph Translavina *[sic]* to English Language Center (hereinafter designated as ELC), then located at 1012 N. Chartrand, Edmond, Oklahoma, on July 8, 1982, for the purpose of closing ELC, prior to investigation into the merits of the school?

2. Does the Service admit that it sent notice of the closing of ELC for failure to file papers showing compliance with the Edmond Fire Code, which ELC had filed and which were then in the Service's possession?

3. Does the Service admit that it closed ELC, then located at 215 N. Boulevard, Edmond, Oklahoma, by sending a telex on October 29, 1982, via the Department of State, to all embassies and consulates, stating that ELC was closed for maintaining inadequate

facilities (the non-existent Fire Code violation), and by sending Mr. Alfredo Arizola to drive away the students on November 1, 1982?

4. Does the Service admit that the papers showing compliance with the Fire Code were found on November 2, 1982, and that the Service's immediate response to finding its own error was to announce that a hearing would be required before "the Immigration Judge" who would decide upon the question of continued approval, such approval at "the present location only", a new I-17 to be required at any other location?

5. Does the Service admit that it then alienated the lessor of "the present location" (Edmond Board of Education), causing the Board to terminate ELC's lease, leaving the school in violation of the Service's own limited approval for the very location interfered with, thus making it impossible for the school to comply with the Service's own order?

6. Does the Service admit it "lost" the Form I-17 (and all its attendant documents) which was necessary to the deliberation of the Special Inquiry Officer for each of three hearings, one in January 1982, one in March 1982, and one in May 1982?

7. Does the Service admit that it's officers wrongfully closed the school and withheld proper notice to U.S. Embassies and Consulates of its rightful status in order to damage the school?

8. Does the Service admit to refusing to view copies of the papers showing compliance with the Edmond Fire Code (which had been duly sent on time to the Dallas office), presented both by person and by mail to the Oklahoma City office, prior to the actual closing of the school?

9. Does the Service admit that it withheld notification to embassies and consultates *[sic]* of the true status of the school from October 29, 1982, to the time of the intervention of the Department of State in March of 1984?

10. Does the Service admit to having "lost" the school's I-17 (which was required of all schools serving F-1 students), which the school sent to Commissioner Carmichael, thus delaying until December 1986 award of a permanent file number in the name of the corporation which actually operates the school?

11. Does the Oklahoma City Office admit to having omitted ELC from the list of area language schools sent to Commissioner Carmichael's Washington Office of INS?

12. As the result of the omission from the list (item 11), does the Service admit that ELC was denied a temporary number and new I-20 forms, thus causing prospective students to be detained at ports of entry because they held outdated I-20 forms?

13. Does the Service admit to knowingly having driven twenty-two students from the school, which was in proper facilities, and sealing off students' access to the school from all foreign countries

from October 29, 1982, till March 1983 when Secretary of State George Shultz caused an investigation to be made in March of 1983?

14. Does the Service admit indicating by telex to the Counsulor *[sic]* Officer in Maricabo *[sic]*, Venezuela, that approval of ELC had been withdrawn pending the outcome of a hearing before a Special Inquiry Officer, but that it could issue I-20's until the matter was settled by those hearings?

15. Does the Service admit to blocking the entry into the school of sixty-two or more students between October 18, 1982, and March 7, 1983, causing severe money damages to the school?

16. Does the Service admit to having caused minor problems to be made into major difficulties because of its malicious attitudes toward the school and its officers, i.e., forcing the Director to obtain aid from the District Office in Dallas rather than giving necessary aid itself, refusing to talk with the Consular official in Maracaibo,

and by refusing to inquire into its communications via the Department of State?

17. Does the Service admit having negligently pursued its present course of harassme..., by delaying the issuance of ELC's permanent file number from October 1984 to December 1986, thereby damaging ELC financially by preventing the sale of stock in Twashakarris, Inc.?

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REQUEST FOR ADMISSIONS

Part II

1. Does Mr. Ralph Translavina *[sic]*, formerly of the Oklahoma City Office, admit to having appeared at ELC (then located at 1012 N. Chartrand, Edmond, Oklahoma) for the stated purpose of closing the school, without prior investigation into its merits?

2. Does Mr. Ralph Translavina *[sic]* also admit that he attempted to use his office to interfere with ELC's relationship to the Edmond Fire Department, the Edmond Code Enforcement Coordinator, officials of Central State University, and, on a later date, Edmond Public Schools, its later lessor?

3. Does Mr. James Woods, formerly in charge of the Oklahoma City Office, admit that his response to notice from the Dallas District Office that the lost papers had been found was to require the school to appear before "an Immigration Judge"?

4. Does Mr. Woods admit that he exceeded his authority by limiting ELC's authorization to one "particular location" only, that he was negligent by failing to provide adequate protection of the papers (the I-17) necessary for the hearings before the Special Inquiry Officer, and that he exceeded his authority by omitting ELC's name from the list sent to Commissioner Carmichael in Washington, D.C., thus causing ELC not to be issued a temporary file number?

5. Does Mr. Woods further admit having exceeded his authority by denying approval to ELC both prior to and immediately following the hearing before the Special Inquiry Officer?

6. Does Mr. William J. Chambers admit to having sent notice of irrevocable closing of ELC because it had failed to file papers demonstrating that the school was being operated in adequate, approved facilities while those papers had been filed and were actually in the possession of the Dallas Office?

7. Does Mr. Chambers admit to refusing to accept phone calls from the school's Director after Mr. Chambers had sent notice of irrevocable closing?

8. Does Mr. Woods admit that at sometime prior to 10:00a.m. or thereabouts, on November 1, 1982, he instructed Mr. Robert Church not to view copies of the "lost papers" which showed ELC's compliance with the Edmond Fire Code--the "loss" of which by the Service resulted in the closing of ELC the same day at 1:30p.m. by the Service?

9. Does Mr. Woods further admit that his office prohibited transfers of students to ELC while it was still in approved status?

10. Does Mr. Alfredo Arizola admit that he closed ELC by forcing students to leave the premises while he knew that the school was no longer operating at the 1012 N. Chartrand address, the facility which was under notice to conform to the Edmond Fire Code, and that at the 215 N. Boulevard address no such fire code

infraction existed, and that the facility was obviously leased from the Edmond Board of Education, and that he was so advised in the presence of an Edmond police officer, and that he knowingly still insisted upon closing the wrong facility?

11. Does Mr. Arizola further admit to having misrepresented his business while on the Central State University campus on November 1, 1982, to officers of that university by stating that he was a U.S. Marshal and that he had a warrant for Mr. James Stewart (the Director of the school and a professor in the university), thus fraudently *[sic]* misusing his limited authority in order to slander Mr. Stewart at his place of employment, when, in fact, he bore a copy of the notice of closing which had already been delivered to Mr. Stewart by mail?

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., a/k/a ENGLISH LANGUAGE CENTER AND JAMES E. STEWART, PRESIDENT AND DIRECTOR	)	
Plaintiffs	)	
-vs-	)	CIV 87-362-T
THE UNITED STATES OF AMERICA, et al.	)	
Defendants.	)	

PARTIAL ANSWERS TO PLAINTIFFS' REQUEST FOR ADMISSION

To Plaintiffs' Request for Admissions numbered 3, 4, 5, 8, 9 and 12 directed to him, Defendant, James Woods responds as follows:

Request No. 3:	Admitted
Request No. 4	Denied
Request No. 5	Denied
Request No. 8	Denied
Request No. 9	Denied
Request No. 12	Denied

I certify under penalty of perjury that the foregoing statements are trued to the best of my knowledge.

/s/ James Woods
JAMES WOODS

MAILING CERTIFICATE

This is to certify that an unsigned copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the [blank] day of [blank] 1987. The signed original will be forwarded upon execution.

/s/ R A Bradford
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., a/k/a ENGLISH LANGUAGE CENTER AND JAMES E. STEWART, PRESIDENT AND DIRECTOR	)
Plaintiffs	)
-vs-	)CIV 87-362-T
THE UNITED STATES OF AMERICA, et al.	)
Defendants.	)

PARTIAL ANSWERS TO PLAINTIFFS' REQUEST FOR ADMISSION

To Plaintiffs' Request for Admissions numbered 1, 2 and 13 directed to him, Defendant, Ralph R. Translavina *[sic]* responds as follows:

Request No. 1	Denied
Request No. 2	Denied
Request No. 13	Denied

I certify under penalty of perjury that the foregoing statements are trued to the best of my knowledge.

/s/ Ralph R. Traslavina
RALPH R. TRANSLAVINA *[sic]*

MAILING CERTIFICATE

This is to certify that an unsigned copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the [blank] day of [blank] 1987. The signed original will be forwarded upon execution.

/s/ R A Bradford
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., a/k/a ENGLISH LANGUAGE CENTER AND JAMES E. STEWART, PRESIDENT AND DIRECTOR	)
Plaintiffs	)
-vs-	)CIV 87-362-T
THE UNITED STATES OF AMERICA, et al.	)
Defendants.	)

PARTIAL ANSWERS TO PLAINTIFFS' REQUEST FOR ADMISSION

To Plaintiffs' Request for Admissions numbered 10, 11 and 14 directed to him, Defendant, Alfredo V. Arizola responds as follows:

Request No. 10	Denied
Request No. 11	Denied
Request No. 14	Denied

I certify under penalty of perjury that the foregoing statements are trued to the bes11t of my knowledge.

/s/ Alfredo V. Arizola
ALFREDO V. ARIZOLA

MAILING CERTIFICATE

This is to certify that an unsigned copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 30th day of July 1987. The signed original will be forwarded upon execution.

/s/ R A Bradford
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TWASHAKARRIS, INC., a/k/a ENGLISH LANGUAGE CENTER AND JAMES E. STEWART, PRESIDENT AND DIRECTOR	)
Plaintiffs	)
-vs-	)CIV 87-362-T
THE UNITED STATES OF AMERICA, et al.	)
Defendants.	)

PARTIAL ANSWERS TO PLAINTIFFS' REQUEST FOR ADMISSION

To Plaintiffs' Request for Admissions numbered 6, and 7 directed to him, Defendant, William J. Chambers responds as follows:

Request No. 6 Denied

Request No. 7 Denied

I certify under penalty of perjury that the foregoing statements are trued to the best of my knowledge.

/s/ [Unsigned]
WILLIAM J. CHAMBERS

MAILING CERTIFICATE

This is to certify that an unsigned copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 23 day of July 1987. The signed original will be forwarded upon execution.

/s/ R A Bradford
Assistant U. S. Attorney

FRAUDULENT DENIALS OF INDIVIDUAL OFFICIALS

FRAUDULENT DENIAL:

As response to Request #1, Mr. Translavina *[sic]* denies having appeared at the school to close it without prior investigation as to merit.

EVIDENCE SHOWING THE FRAUD:

There are three witnesses to the visit, and Mr. Translavina *[sic]* inadvertently left his notes at the school which are still in Plaintiffs' possession.

FRAUDULENT DENIAL:

As a response to Request #2, Mr. Translavina *[sic]* denies interfering with ELC's relationships in Edmond.

EVIDENCE SHOWING THE FRAUD:

There are witnesses available; one official is now dead, but one witness remembers what was said. From other offices ELC has correspondence.

FRAUDULENT DENIAL:

Mr. Translavina *[sic]* denies threatening to deport Mr. Quijada.

EVIDENCE SHOWING THE FRAUD:

There are witnesses to Mr. Quijada's behavior at the hearing. Mr. Quijada is still alive and can give testimony.

TRUTHFUL ADMISSION:

Mr. Woods admits that his response to finding the papers showing that the "lost" papers had been found was to require a needless hearing.

EVIDENCE IN SUPPORT:

His letter requiring the hearing corroborates his admission.

FRAUDULENT DENIAL:

Mr. Woods denied exceeding his authority by limiting ELC's authorization to "one location only."

EVIDENCE SHOWING THE FRAUD:

A letter to that effect from Mr. Woods. 8 CFR 214 approval applies to the district, not any particular location.

FRAUDULENT DENIAL:

Mr. Woods denies failure to protect the papers necessary to the hearing before Mr. Burkholder.

EVIDENCE SHOWING THE FRAUD:

Mr. Burkholder's statement before each of the three sessions that the papers were not provided. Plaintiffs possess stenographic notes of the hearing.

FRAUDULENT DENIAL:

Mr. Woods denies omitting ELC's name from the approved list.

EVIDENCE SHOWING THE FRAUD:

ELC has a copy of the list which was published in Mexico.

FRAUDULENT DENIAL:

Mr. Woods denies having withheld approval to ELC without authority.

EVIDENCE SHOWING FRAUD:

Phone conversations and correspondence from Mr. Woods show that he withheld approval and refused to send correct, legal notice concerning the school.

FRAUDULENT DENIAL:

Mr. Woods denies having taken the management of the school out of the hands of the Director, while knowing the school to be blameless.

EVIDENCE SHOWING FRAUD:

Affidavits of two witnesses show that the Oklahoma City office, under Mr. Woods' direction, gave all students sixty days to choose a different school. Correspondence and one witness show that Mr. Woods refused to send information to embassies as to the legal status of the school. Mr. Woods admits that his response to having found the so-called "lost" papers was to require a set of hearings before an "Immigration Judge." The record shows that the hearings were mere harassment because the necessary papers were never produced for the Special Inquiry Officer now known as Immigration

Judge, and no basis for any complaint on the part of INS was shown, all issues moot from the first hearing to the last.

FRAUDULENT DENIAL:

Mr. William J. Chambers perpetrated fraud upon the court by denying that he sent notice of irrevocable closing while the papers showing compliance with the Edmond Fire Code were in his possession.

EVIDENCE SHOWING FRAUD:

Plaintiffs have a copy of his letter.

FRAUDULENT DENIAL:

Mr. Chambers also denies refusing to accept phone calls from the distressed school's director.

EVIDENCE SHOWING FRAUD:

Director Stewart is witness to this event.

FRAUDULENT DENIAL:

Mr. Alfredo Arizola denies forcing the students to leave facilities at 215 N. Boulevard while knowing that the fire code violation had occurred at a previous address. He also denies misrepresenting himself at Central State University and at ELC as a U.S. Marshal with a warrant for James E. Stewart.

EVIDENCE SHOWING FRAUD:

Stewart and Mr. Dadgostari are witnesses to these events. Mr. Arizola showed his INS badge and a copy of Mr. Chambers' Notice of Irrevocable closing.